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COMMITTEE ON THE RIGHTS OF THE CHILD

# CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States parties due in 1992

Addendum

## DEMOCRATIC REPUBLIC OF THE CONGO*

[28 February 1998]

* Following the request addressed to the authorities of the Democratic Republic of the Congo by the Committee on the Rights of the Child on 1 April 1998, the first part of the initial report has been updated; a revised version was submitted on 14 June 2000 and is incorporated in this document.

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## FOREWORD

There can be no denying the importance of young people in the construction of tomorrow's Democratic Republic of the Congo. Over 50 per cent of the population (45.5 million persons in 1995) are below the age of 18 years. This is the group of persons covered by the Convention on the Rights of the Child, the actual implementation of which is analysed in the various chapters of this initial report.

The Government wishes, through the intermediary of the National Committee on Children, to thank UNICEF, which, by financing this study, enabled the Government to meet its commitment to submit its initial report on the implementation of the Convention.

The principal constraint met with in the completion of this task has been the insufficiency or total lack of reliable data. That situation implies the preparation of additional studies on children in particularly difficult situations, and in particular on street children, children subject to sexual abuse, conscripted children and participants in armed conflicts, all these being fields covered by the Convention. These studies will prepare the way for the preparation of the periodic reports which the Government of the Democratic Republic of the Congo will have to submit to the Committee on the Rights of the Child in future years.

On completing this task we express our appreciation of the contributions of the individuals and institutions which assisted in its preparation (see appendix).

## Part One

## General information

### I. LAND AND PEOPLE

### A. Land

1. The Democratic Republic of the Congo is a central African country situated on both sides of the Equator. It is bordered on its north side by the Central African Republic and Sudan, in the east by Uganda, Rwanda, Burundi and the United Republic of Tanzania, in the south by Zambia and Angola and in the west by the Atlantic Ocean, the Cabinda enclave and the Republic of the Congo.

2. The Democratic Republic of the Congo is a huge country with a total area of 2,345,409 square kilometres; the land is mostly flat. In the centre of the country there is a broad basin (cuvette), of an average altitude of 350 metres; it is covered by equatorial forest, interspersed with numerous marshy areas. This central basin is bordered by plateaux rising in successive steps except in the east, where mountains of volcanic composition predominate; their average height is over 1,000 metres.

3. The country is situated astride the Equator; it has a hot and humid climate (average 25° centigrade), and rainfall is regular and heavy. Rainfall and temperatures gradually decline as one moves eastwards. The year is divided into two seasons: a dry season, lasting almost four months, and a long rainy season.

4. The country has a substantial river network. The river Congo crosses the entire country in a general north-westerly direction before flowing into the Atlantic Ocean; it is 4,700 kilometres long, with a discharge rate exceeded only by the Amazon. It is fed by a number of tributary rivers and is navigable along the greater part of its length.

5. The soil and subsoil are rich in important and varied agricultural and mineral resources.

### B. People

#### 1. Demography

6. In 1956 the population was estimated at 12,768,705 persons. By 1960 it had increased to 14,106,666; the administrative census of 1970 gave a figure of 20,700,500, and the scientific census conducted on 1 July 1984 established the population at 30,731,000. According to projections undertaken by institutions specializing in the subject, and in particular the United Nations Population Fund (UNFPA), the population was estimated at 43 million persons in 1995 and 47,500,000 in 1999; it was expected to reach 52,099,000 by the year 2000.[1] The Democratic Republic of the Congo is one of the most populous countries in Africa. The population structure by age and sex has the form of a pyramid with a broad base, concave sides

and a narrow apex. This is due to overall growth of the population: in 1997 the latter included 25.9 million individuals under age 18. [2] The natural rate of population increase is 3.4 per cent (1990-1998); the fertility rate is 6.4. Life expectancy at birth rose from age 45 in 1970 to age 51 in 1998.

7. A breakdown of the population by zone reveals the following features of the demographic situation:

(a) Since 1993, 60 per cent of the population has been living in rural areas and 40 per cent in urban centres with 5,000 or more inhabitants; the degree of concentration in urban areas varies considerably from province to province;

(b) In Maniéma the proportion of the population in urban areas is low; in Kinshasa it is high (about one tenth of the entire population);

(c) Rapid growth of the urban population (7 to 8 per cent); the concentration of 28 per cent of the entire urban population in Kinshasa; and the high rate of emigration from rural areas;

(d) An uneven geographical distribution of the population; the highest population densities are found in the city of Kinshasa and the provinces of Bas-Congo, Kivu (Nord and Sud) and Maniéma.

### 2. Ethnic groups

8. The population is divided into over 450 tribes, which can be classified into four major groups, each firmly established in a particular territory. The largest tribe (18 per cent) is the Luba (or Baluba) living in Centre-Sud; the next largest is the Kongo (16.6 per cent), living in Bas-Congo. The north-east region is inhabited by the Mongo (13.5 per cent), the groups speaking Rwandan and Burundian languages (3.8 per cent), the Zandé (6.1 per cent), the Mangbetu and a large number of other ethnic groups. The Chokwé and the Lunda are to be found along the frontier with Angola. The Pygmies (less than 0.5 per cent) are to be found in Equateur and Orientale provinces.

### 3. Languages

9. In the Democratic Republic of the Congo the official language is French. In addition, some 250 languages and dialects are in widespread use. Of these, 90 per cent are of Bantu origin. Four of them are referred to as "national languages", namely: (a) Swahili (40 per cent) in the east, in Nord- and Sud-Kivu, Katanga, Orientale and Maniéma provinces; (b) Lingala (27.5 per cent) in Kinshasa (the capital) and the neighbouring areas, and in Equateur and Orientale provinces; (c) Kikongo (17.7 per cent) in Bas-Congo and Bandundu; and (d) Chiluba (15 per cent) in the two provinces of Kasai (Oriental and Occidental). It should also be mentioned that in the northern part of the country the many spoken languages belong to the Negro-Congolese family (Ubangian subgroup) and the Nilo-Saharan families (central Sudan group and Nilotic subgroup).

### 4. Religion

10. Although according to its Constitution the Democratic Republic of the Congo is a secular State, there are nevertheless five traditional religious denominations: Roman Catholic, Kimbanguist, Protestant, Orthodox and Muslim. There are also several religious sects within the country. However, there are still a few animists.

## II. SOCIO-ECONOMIC INDICATORS

11. Against a background of structural imbalance in the fields of production and services, the economic development of the Democratic Republic of the Congo has been extremely patchy. Between 1983 and 1989 the situation was relatively stable. In 1990 the country entered a period of economic crisis which lasted until 1996; that period was marked by a breakdown of the principal economic equilibria, which found expression in high rates of inflation and currency depreciation, a fall in production, generalized unemployment and extreme poverty. That situation - a characteristic feature of the Second Republic - was primarily attributable to lax financial and budgetary management together with unplanned expenditure met by recourse to the printing press.

12. Between May 1997 and July 1998, following the establishment of the new regime, the principal economic indicators showed a remarkable improvement in the situation, particularly in the areas of prices, currency and public finance. This situation led the Government to launch a new currency - the Congolese franc - the parity and exchange rates of which against the principal foreign currencies were encouraging. Unfortunately, since 2 August 1998 the principal economic equilibria have once again been disrupted on account of the attack launched against the country by the Rwanda-Burundi-Uganda coalition.

13. That war has given rise to hyperinflation. The latter has had serious repercussions for the purchasing power of the population, which it has reduced to poverty. At the same time it has given rise to a significant fall (estimated at 3.15 per cent) in gross domestic product (GDP). The rate of inflation fell from 656.8 per cent in 1996 to 13.7 per cent in 1997 and 2.2 per cent in July 1998. But in the absence of any revival of production, and in the light of the conflictual atmosphere prevailing in the country, the results achieved have been precarious and uncertain. This explains why the inflation rate rose from 196.3 per cent in September 1999 to 489 per cent in December 1999.[3]

### A. Principal economic data

14. The following is a summary of the principal data relating to the economic situation in 1998:[4]

(a) Production: estimated GDP 3.15 per cent;

(b) Market inflation: 108.5 per cent;

(c) Public finance: on 31 August 1998 the position was as follows:

- Income: US$ 263.8 million
- Expenditure: US$ 352.9 million
- Balance: -US$ 89.1 million;

(d) Balance of payments: the deficit during the first six months of 1998 was US$ 250 million (as against US$ 363.9 million in 1997);

(e) Exchange rates: in September 1998 the Congolese franc (Fc) stood at 1.80 to a United States dollar. In January 2000 the official rate was 9 Fc to the dollar (parallel market rate: 30 Fc);

(f) Money in circulation: on 23 September 1998: 491.5 million Fc on 23 September1998 (as against 228.34 million Fc on 31 December 1997);

(g) Currency reform: this reform was launched on 30 June 1998. It permitted the introduction of a uniform currency throughout the country, the establishment of a system of payments through the banks, the unification of the exchange rate and the restructuring of the banking system;

(h) External indebtedness:

| | |
|---|---|
| In 1975: | US$ 1,718 million (25 per cent of GNP) |
| In 1986: | US$ 5,430 (97 per cent of GNP) |
| Total indebtedness: | US$ 12,948.38 million in September 1998 (as against US$ 12,263.52 million on 30 June 1997) |
| Debt servicing: | US$ 8,304.63 million on 30 June 1998; |

(i) Incomes and wages: price instability and the steady fall in the purchasing power of the working masses are evidenced by the gross rate of GDP per inhabitant, which fell from US$ 170 in 1989 to US$ 120 in 1992 and 117 in 1993; today it stands at approximately US$ 90;

(j) Money and finance: in this area three principal facts may be borne in mind:

(i) A high rate of inflation, a consequence of the low level of national production caused by the protracted economic crisis, aggravated by the war of aggression of which the Democratic Republic of the Congo has been the object for the last two years;

(ii) The serious disequilibrium in the balance of payments, giving rise to a rapid depreciation of the Congolese franc and a heavy burden of external indebtedness;

(iii) The deterioration of public finances, which showed large deficits;

(k) Investment: public investment has shown sharp falls, owing mainly to the degradation of basic infrastructures and the fall in production.

## B. The social situation

15. The deterioration of the social fabric began at the end of the 1970s. It was accelerated by a series of unfortunate events, namely the 1974 "Zairianization" campaign and the two outbreaks of looting in October 1991 and September 1993. However, the war of liberation of 1996/97 and the accession to power of the new regime opened prospects for a national reconstruction aimed at the rehabilitation of basic social services.

16. But that process was halted by the war of aggression against the Democratic Republic of the Congo which has been going on since 2 August 1998 and is still continuing, notwithstanding the signature of ceasefire agreements on 10 July 1999 in Lusaka and on 14 April 2000 in Kampala. The social sectors worst affected by these crises include health, education and the protection of the child.

### 1. The health sector

17. During the last 20 years the health situation has deteriorated considerably. Evidence of this is to be found in the basic data set out in the following paragraphs.

18. Children and adolescents:

| | |
|---|---|
| Infantile mortality rate: | 125 per mille |
| Perinatal mortality: | 80 per cent |
| Mortality among under-fives: | 213 per mille |
| Weight insufficiency: | 15 per cent |
| Malnutrition among children under age 5: | 50 per cent |
| Immunization coverage (1990-99): | 29 per cent. |

Children aged one year having received a complete series of vaccinations against:

| | |
|---|---|
| Tuberculosis (1995): | 46 per cent |
| Diphtheria, chickenpox and tetanus: | 26 per cent |
| [In 1999, chickenpox and tetanus: | 57.1 per cent] |
| Measles (1995): | 39 per cent |
| Poliomyelitis (1995): | 27 per cent. |

During the 1999 vaccination campaign the percentages were as follows: phase 1: 96.4 per cent; phase 2: 92.4 per cent; phase 3: 94.2 per cent. It should be mentioned that during this campaign vitamin A was added to the anti-poliomyelitis vaccination administered to children under 5.

19. Breastfeeding:

Percentages of infants breastfed (1990-99):

Entirely breastfed (0-3 months): 32 per cent
Breastfeeding together with weaning foods: 40 per cent
Protracted breastfeeding (20-23 months): 64 per cent.

Educational campaigns promoting breastfeeding have been launched with the aim of warning parents against the potential dangers of feeding infants exclusively on artificial foods. In 1999 the Government adopted the International Code of Marketing of Breast-Milk Substitutes, but has yet to give it force of law.

20. HIV/AIDS

In 1997, 310,000 children under age 15 whose parents, or whose mothers, had died of AIDS were identified.[5] The rate of prevalence among adults is 4.4 per cent. The rate of transmission of HIV from mothers to children is 40 per cent.

The Government, with the assistance of external partners and in cooperation with NGOs, has launched programmes to strengthen the ability of families and communities to look after orphans and other children affected by this disease.

- Induced abortions among adolescents: 16.2 per cent

- Unwanted pregnancies: 30 per cent of all pregnancies.

21. Women of child-bearing age

| | |
|---|---|
| High maternal death rate: | 1,837 maternal deaths per 100,000 live births |
| Extent of coverage of prenatal care: | 67.2 per cent |
| Birth rate: | 48 per mille |
| Fertility rate: | 217 per mille. |

22. Water and sanitation

Percentage of population with access to safe water (1990-98):

| | |
|---|---|
| Total: | 42 per cent |
| In urban areas: | 89 per cent |
| In rural areas: | 26 per cent. |

Percentage of the population with access to reliable sanitation (1990-98):

| | |
|---|---|
| Total: | 18 per cent |
| In urban areas: | 53 per cent |
| In rural areas: | 6 per cent. |

23. Consumption of iodized salt

During the period 1992-98, 90 per cent of households were consuming iodized salt. The aim is to ensure that children do not suffer from intellectual or physical deficiencies or other disorders caused by a lack of iodine. Certain regions of the Democratic Republic of the Congo (Equateur, Bas-Congo) are particularly severely affected.

## 2. The educational sector

24. In 1999, out of 12 million children of school age (between ages 6 and 15), only half (6 million) were attending school. Of the latter, 42 per cent are girls; but three-quarters of them leave school before completing primary schooling, in particular, on account of the poverty of their parents,[6] early marriage or unplanned pregnancies.

Adult literacy rate:

| | | |
|---|---|---|
| 1980: | men: | 75 per cent |
| | women: | 45 per cent |
| 1995: | men: | 87 per cent |
| | women: | 68 per cent |

Enrolment rate in primary education:

| | | |
|---|---|---|
| 1990-97 (gross): | boys: | 86 per cent |
| | girls: | 59 per cent |
| 1999-96 (net) | boys: | 71 per cent |
| | girls: | 50 per cent |

Enrolment rate in secondary education:

| | | |
|---|---|---|
| 1990-96: | boys: | 32 per cent |
| | girls: | 19 per cent |

Net attendance rate in primary education:

| | | |
|---|---|---|
| 1990-98: | boys: | 59 per cent |
| | girls: | 53 per cent |
| 1999 | overall: | 39 per cent. |

25. During the period 1990-95, only 64 per cent of children who enrolled in the first year of primary education reached the fifth year. The principal causes of the qualitative and quantitative deterioration of basic education are the breakdown of structural cooperation and the small size of the education budget (24 per cent in 1980 and 10 per cent in 1989, falling to 1 per cent in 1999), the low purchasing power of families and the loss of motivation among teachers on account of the economic crisis which the country is undergoing.

### 3. The protection of children

26. The economic crisis and the armed conflicts from which the country is suffering are still taking a heavy toll of child victims. New categories of children requiring special protection measures - unaccompanied children in population displacements caused by the war; street children; children being economically or sexually exploited; children who are caught up in mining operations; and child soldiers - are appearing.

#### (a) Child soldiers[7]

27. The war of liberation of 1996-1997 and the people's determination to safeguard national sovereignty in the face of the war of aggression launched against the Democratic Republic of Congo induced a considerable number of young Congolese to enrol in the combatant forces. On 6-7 December 1999 the Government, in cooperation with UNICEF and other partners, organized an African forum in Kinshasa on the demobilization and reinsertion of child soldiers. From that conference emerged a set of guidelines for the process of demobilization and social reintegration of child soldiers in Congo.

28. The National Commission on Demobilization and Reintegration (CONADER), a coordination mechanism covering the key technical ministries and established by presidential decree, has been charged with the implementation of that process. The precondition for the commencement of operations within this structure is the cessation of hostilities, since no viable activity can be accomplished unless peace and security are achieved.

#### (b) Street children[8]

29. There are currently between 15,000 and 20,000 street children in Kinshasa. The scale of this highly complex phenomenon can be attributed to a number of factors, and in particular the poverty experienced by families on account of the economic crisis, the break-up of families following events such as divorce and displacements due to the war, the abandonment of children believed to have magical powers and the death of parents caused by AIDS.

#### (c) Children in the mining basins[9]

30. This category includes two types of children:

(a) Children forced to work in artisanal mining enterprises, more particularly in the provinces of Kasai orientale, Kasai occidentale and Orientale;

(b) Children whose existence is affected by the presence of mines in their vital environment.

As a rule these children do not have access to basic social services (health, education).

(d) Child victims of AIDS

31. This group of children comprises children one or both of whose parents have died of AIDS and those who are themselves infected. In 1997 the number of children under age 15 whose mothers, or both of whose parents, had died of AIDS was estimated at 310,000.

## III. POLITICAL STRUCTURE

32. After over 30 years of a one-party, dictatorial and highly centralized regime, new prospects were opened up in April 1990 through a political dialogue which was to lead to the establishment of democratic institutions of a nature to guarantee the enjoyment of the fundamental rights of the citizens and national development.

33. But this process, which was planned to take three years, lasted seven years, and even so remained unfinished on account of the dilatory manoeuvres of the political leaders of the Second Republic. Thus the lack of national consensus led to social tensions, which found expression in the outbreaks of looting in 1991 and 1993 and the general climate of insecurity.

34. The entry into office of the Government of Public Salvation on 17 May 1997 permitted a break with the former system. The Republic of Zaire became the Democratic Republic of the Congo and committed itself to a course of national reconstruction, the political objective within which was the creation of a sovereign nation and a State governed by the rule of law, democracy and social justice and with political power commensurate with its geographical situation, its extent and its substantial natural resources, the better to contribute to the development of Africa.

35. To translate those objectives into reality, the authorities adopted a new political philosophy which was to guide the development of the country. The programme for the achievement of those objectives was as follows:

(a) During the first half of 1998: the establishment of a constitutional and electoral commission. That body drew up a draft constitution, which was submitted to the political and social forces for study, and started to prepare for elections;

(b) During the second half of 1998: consultation of the dynamic forces within the nation in order to initiate a dialogue which was to lead to internal cohesion. In October 1998 the Head of State held meetings with the principal political organizations, civil society and the Episcopal Conference of Bishops in the Congo, who submitted to him their plan for peace and national reconstruction;

(c) In January 1999 Decree 194, concerning the forms, organization and functioning of political parties and associations was signed;

(d) April-December 1999: referendum on the Constitution and elections at all levels.

36. It is clear that the war of oppression directed unjustly against the Democratic Republic of the Congo since 2 August 1988 by the Burundi-Rwanda-Uganda coalition has upset the political calendar and thus jeopardized the future of the process of democratization and development in the country.

37. Above all, children are the worst sufferers from this war, which, in the provinces occupied by foreign troops, and particularly in Kisangani city, is still causing deaths and disrupting access to basic services, including vaccination against poliomyelitis, a nationwide campaign against which is being successfully conducted in the provinces under government control.

38. The Government of National Salvation is determined to restore security and peace throughout the country and has taken part in the different meetings organized at regional level by the OAU and the SADC, and at the level of the United Nations, which led to the signature of the cease-fire agreement of 10 July 1999 in Lusaka (Zambia).

## IV. GENERAL LEGAL FRAMEWORK FOR THE PROTECTION OF THE RIGHTS OF THE CHILD

39. The protection of fundamental human rights is guaranteed by Decree-Law No. 003 of 27 May 1997, article 9 of which stipulates that "the human being is sacred. The State has the obligation to respect and protect it".

### A. Protection at the national level

40. This protection is provided by a number of legal provisions which in practice constitute the body of legislation which should be applicable to every child, whether boy or girl born within or outside marriage, handicapped or not, living in a family environment or on the streets. The relevant provisions are to be found in Decree-Law No. 003 of 27 May 1977 concerning the organization and exercise of power in the Democratic Republic of Congo, as subsequently amended; in the Family Code; in the Criminal Code; and in the Labour Code. It should be mentioned that since the entry into force of Decree-Law No. 003 of 27 May 1997 that instrument has regulated the exercise of power; in article 2 it guarantees individual and collective rights and freedoms, subject to compliance with the law, public order and morals.

### B. Protection at the international level

41. In addition to the Convention on the Rights of the Child (ratified on 22 August 1990), the Democratic Republic of the Congo is a party to other international instruments on the protection of human rights, and in particular:

- The International Covenant on Economic, Social and Cultural Rights (ratification 16 December 1996);

- The International Covenant on Civil and Political Rights (16 December 1996);

- The International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965);

- The International Convention on the Suppression and Punishment of the Crime of Apartheid (30 November 1973);

- The Convention on the Prevention and Punishment of the Crime of Genocide (9 December 1948);

- The Convention on the Elimination of All Forms of Discrimination against Women (18 December 1979);

- The Convention on the Political Rights of Women (20 December 1952);

- The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (7 September 1956);

- The Convention relating to the Status of Refugees (28 July 1951) and the Protocol relating to the Status of Refugees (16 December 1966);[10]

- The 1949 Geneva Conventions.

These various provisions are complied with by the authorities, the police, courts and tribunals and administrative institutions (the ministries responsible for public health, social affairs and the family, human rights, reconstruction, labour and social insurance).

42. Other national institutions have been established to ensure the promotion of the rights of the child. The most important of these are the National Council for Children (CNE) and the Provincial Councils for Children (CPEs), within which there are representatives of public institutions, non-governmental organizations (NGOs) and secular and religious associations active in matters concerning children. The NGOs caring for children in difficulties have joined together in a nationwide body known as the CNOS in order to harmonize their interventions and to rationalize the use of the limited resources available.

## C. Remedies

43. In the Democratic Republic of Congo remedies are available at administrative and judicial levels.

### 1. Administrative remedies

44. In the event of a measure deemed prejudicial, any official may request his immediate superior to reconsider a decision or appeal to a higher administrative authority. He also has the right to appeal to the administrative inspectorate if he finds the measures taken unsatisfactory. However, as a general rule such matters are settled informally. Only where conciliation fails is a case referred to the judicial authorities.

### 2. Judicial remedies

45. The Democratic Republic of the Congo recognizes that any person involved in a justiciable dispute has the right of appeal to a higher court. Any judgement handed down by one court may be reviewed or quashed by a higher court. The different forms of remedy are: opposition, appeal, review, (according to whether the matter is one for customary or criminal law) and cassation.

## D. The structure of the judiciary

46. The structure of the judiciary in the Democratic Republic of the Congo is as follows:

- district court;
- court of first instance;
- court of appeal;
- military court;
- Supreme Court of Justice.

## E. Human rights instruments and national legislation

47. National legislation - and more specifically Decree-Law No. 003 of 27 May 1997, the Penal Code and the Labour Code - has been inspired to a considerable degree by the instruments relating to human rights. As legal instruments are published in the Official Gazette, the Congo is able to ensure that its domestic legal system is in conformity with the international legal order.

## F. Associations for the defence of human rights

48. The organizations active in the defence of human rights include in particular:

- The Congolese Human Rights League (LICODHO);
- The Congolese League for the Defence of Human Rights;
- The African Zone League for the Defence of the Rights of Schoolchildren and Students (LIZADDEL);
- The Congolese Section of the International Association of Human Rights Judges and Advocates;
- The National League for Free and Transparent Elections (LINELIT);
- The League of Teachers in Civic Education (LECI);

- The Programme for the Rehabilitation and Protection of Pygmies;

- The Human Rights Federation;

- The Union for the Defence of the Free Press and Human Rights;

- The Congolese Centre for the Promotion of the Rights of Women and Children (CCDEF).

## V. INFORMATION AND PUBLICITY

49. Information on human rights in general is transmitted through the mass media (newspapers, periodicals and the audio-visual media), the bulletins of the human rights organizations such as LINELIT, the publication in national languages of the Convention on the Rights of the Child and other legal texts, official publications (such as Revue Libota, published by the Ministry of Social Affairs and the Family), the White Paper issued by the Ministry for Human Rights and the different campaigns, such as the vaccination campaigns, etc.

## Part Two

## Implementation of the Convention

### INTRODUCTION

### A. The child in Congolese society

50. When considering the problems of children in an African environment generally, and in a Congolese environment in particular, a distinction must be made between their place during the pre-colonial period, which was marked by essentially traditional or ancestral values, and that during the colonial and post-colonial period, which has induced Africans, and particularly Congolese, to adopt a path of "authentic" modernity and still motivates them to continue on that path.

#### 1. The child before colonization

51. As everywhere in Africa, in the traditional Congolese environment a child was an asset to the clan and the community to which it belonged; consequently, its education was the concern of everyone. It developed, especially at primary level, in a spirit of relational conformism. Respect for traditional and ancestral practices took precedence over individual rights and freedoms. Thus, the practice of marriage of a girl before puberty and without her consent, that of female circumcision and other practices which modern thinking considers as retrograde derived their rationale from this context of development, which was dominated by community concepts of human rights[11] and the rights of the child. The protection of the child in a traditional environment is still a natural right based on the dignity of its person as a human and social being.

52. This affirmation may seem to run counter to generally accepted modern opinion, which designates African States as champions in the field of violations of human rights. It is not denied that cases of "violation of the rights of the child" did exist during the pre-colonial period; however, it must be pointed out that that judgement often fails to take account of the specifically African and Congolese context, which, moreover, is in the throes of a development crisis. A systemic approach appears to offer the best way of understanding the facts and events in their development context.

#### 2. The child during and after colonization

53. It is particularly in the urban and modern environment that the welfare of children was to give rise to problems. Currently many children in Africa generally and in Congo in particular find themselves in highly critical situations as a result of the rapid changes in the context of their development, and in particular the erosion of the community spirit and approach to life under the influence of modernism. Thus, the members of the Colonial Council justified the drafting of the decree of 6 December 1950 concerning delinquent children in the following terms:

> "The extraordinary development of the Congo, the dislocation of the clans, the outrageous and immoral character of the individualism which is becoming increasingly widespread, the increasing tendency among young people to shake off customary

authority and parental discipline, the abandonment of the customary environment and the drift of thousands of children and adolescents into non-traditional cities and centres are giving rise to problems of the utmost seriousness. In particular, in non-traditional centres and in cities the breakdown of morals, the uncontrolled emancipation of women, gambling and drunkenness are having a pernicious influence on young people and are encouraging vagrancy, theft, prostitution and criminality. In the teeming environment of the centres three or four Natives live in a single room in conditions which can be imagined. The consequences of promiscuity constitute an environment of immorality for young people from which it is difficult for them to escape."[12]

54. Since the country gained its national sovereignty in 1960 these evils have worsened, creating a development of underdevelopment in rural areas and an underdevelopment of development in the towns.[13] Unemployment, a lack of occupations for young people and a lack of supervision over them are some of the factors which have contributed to the phenomenon of "children of and on the streets" which is prevalent in African towns in particular. These many evils are further compounded by the armed conflicts and civil and tribal wars which frequently break out. Today the wind of perestroika is blowing through the African continent with gale force, destabilizing the monolithic political regimes of States and driving them in the direction of a democracy which has still to find its feet. All these upheavals in Africa are having dramatic consequences, particularly for children, to whom special protection must be given.

### B. The protection of the child by the Convention on the Rights of the Child

55. A child needs special protection. That protection is justified by a lack or insufficiency of discernment on its part, the malleability of its character and its physical and mental state, both of which are in full development.[14] No country in the world can claim to be protecting the child sufficiently. Statistics show that thousands of children are dying from hunger and sickness, are deprived of housing, health care and education, are objects of shameless exploitation in the fields of labour, sexuality and morality and are the victims of many tribal and ethnic wars. Many of them are separated from their parents, lack supervision and affection or are mere victims of ill-treatment of all kinds. These evils, which are developing a degree of homogeneity and internationalization, are placing thousands of children throughout the world - and particularly in Africa, a continent undergoing a development crisis - in conditions of physical, psychological, material, cultural, moral and spiritual insecurity. These are the children who are referred to as being "at social risk". They attract the attention of Governments and appeal to them for aid and cooperation, both domestically and internationally. Herein lies the reason for giving protection to children and promoting their rights within the framework of a convention, that is to say, a written agreement on which the nations have reached a consensus and the provisions of which are designed to establish standards acceptable to all.

### C. Commitment of the State

56. On the theoretical plane, the commitment of the State to defend the interests of the child is apparent in the principles laid down in the transitional Constitution (Constitutional Act of the Transition Period),[15] and in particular article 9, which states that "the human being is sacred. The State has the obligation to respect and protect it". Article 11 guarantees the fundamental

freedoms of all citizens. Article 20 states that "the care and education to be given to children and parents constitute, according to the case, for parents and children, a right and a duty which they exercise with the help of the State".

57. On the practical plane, the commitment of the State finds concrete expression in a certain number of measures taken at both the international and national levels:

(a) At the international level, Congo ratified the Convention on the Rights of the Child on 22 August 1990 (Ordinance-Law No. 90/48). It has adopted the African Charter on the Rights and Welfare of the Child (Addis Ababa, 1990). It has taken part in several seminars and symposia on the protection of the child;

(b) At the national level there is a ministry responsible for health, social affairs and the family. Within that ministry the following institutions have been organized:

(i) The National Action Plan for the Survival, Protection and Promotion of the Mother-and-Child Couple by the Year 2000. This plan was drawn up by the Ministry of Planning, Reconstruction and Supplies (November 1992);

(ii) The National Committee on Children, an advisory body to the Government, which was set up in 1994. Its task is to follow up on the recommendations of the World Summit for Children and the implementation of national policy on the protection of the child. In its programme of action for 1997 the Committee provided, among other things, for the establishment of regional committees in the provinces, continuous action to promote more widespread knowledge of the Convention on the Rights of the Child and the preparation of a new policy of rehabilitation and reclassification of children.

For the attainment of the objectives set, cooperation is organized with other ministries (national education, youth and sports, justice, etc.), services, NGOs and specialized agencies of the United Nations whose mandates include the solution of the problems of children.

## D. Working methods

58. In the preparation of this report considerable recourse has been had to the thoughts set down by Professor Idzumbuir Assop in her study on the place of the Convention in domestic law.[16] The report also complies with the guidelines laid down by the Committee on the Rights of the Child regarding the form and content of initial reports by States parties (15 October 1991). In accordance with those guidelines, this report should enable Governments:

(a) To conduct a comprehensive review of the measures undertaken to give effect to the rights of the child under the Convention;

(b) To monitor progress made in the enjoyment of those rights; and

(c) To obtain a detailed picture of the implementation of the Convention, while being aware of the factors and difficulties preventing compliance with the Convention.

59. The general outline of the second part of this report is as follows: (a) the first chapter examines the basic legal texts in force of relevance to the Convention; (b) the second chapter analyses the implementation of the Convention, mentioning the activities, the measures taken and the obstacles met with; and (c) the third chapter contains resolutions and recommendations addressed to the Government, to parents, to NGOs and to international organizations.

## I. EXAMINATION OF LEGAL TEXTS OF RELEVANCE TO THE CONVENTION

60. Article 4 of the Convention reads as follows:

> "States parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation."

In accordance with the commitment accepted by the Congo, which has ratified the convention, we shall examine the level of incorporation or implementation of the Convention through domestic legislative instruments. This brief examination will cover the transitional Constitution, the Criminal Code, the Family Code and the Labour Code.

### A. The transitional Constitution

61. The transitional Constitution lays down the basic provisions with which, as a general rule, all other national legislation must comply.

62. A child, on the same footing as an adult, enjoys all the fundamental rights constitutionally guaranteed to all Congolese nationals without any discrimination arising from the law or an act of the executive by reason of sex, religion, membership of a social or ethnic group, place of birth, place of residence or political convictions (art. 11). Thus a child enjoys:

(a) The right to life (art. 9) and to individual and collective freedom, and in particular freedom of movement, of enterprise, of information, of association and of assembly and to take part in processions and demonstrations, subject to compliance with the law, public order and morals (art. 10);

(b) The right to development, peace and the common heritage of humankind (art. 12);

(c) The right to defend itself in person or to be assisted in so doing by an advocate of its choice (art. 15);

(d) The right to freedom of thought, conscience and religion (art. 17);

(e) The right to freedom of expression (art. 18), to marry and to found a family with a person of its choice and of the opposite sex (art. 20);

(f) The right to education and instruction (art. 21), to individual and collective ownership of property (art. 22), to the inviolability of the home (art. 23), to confidentiality of its correspondence, telecommunications and all other forms of communication (art. 24), to engage in commerce (art. 25), to work (art. 28), to strike under the conditions laid down by law (art. 29) and to a healthy environment (art. 31).

These provisions in the transitional Constitution, taken together, are in conformity with the spirit of the Convention on the Rights of the Child and of the Universal Declaration of Human Rights, which has served as a model for all international legislation on the rights of the child. However, flaws, shortcomings and contradictions are occasionally encountered in the implementation and the form of individual legislative instruments.

## B. The Criminal Code

63. On account of its particular situation, a child needs legal protection before as well as after birth. With this principle in mind the Criminal Code, in conformity with the transitional Constitution, protects the child against every threat to its life and its physical and moral integrity.

### 1. Abortion

64. Abortion is prohibited and punishable under articles 166 and 167 of the Code. However, the definition of abortion - the "expulsion of the foetus from the body of the mother" - has omissions and shortcomings with regard to the protection of the human life in process of gestation. These provisions need to be elaborated in the light of scientific knowledge in the field of human reproduction in order better to protect the child.

### 2. Repression of anti-natalist propaganda

65. The provisions of article 178 of the Code, which prohibits any act of a nature to prevent conception (and in particular the sale, distribution, exhibition and popularization of contraceptive devices and methods), give rise to problems in the light of the presidential ordinance of 14 February 1973, which established the National Council on Desirable Births (CNND) and empowered it to provide couples wishing to engage in family planning with those devices which are specifically prohibited under the Criminal Code. Since the provisions of the presidential ordinance, like those of article 18, paragraph 2, of the Convention, seek to promote the welfare of the family and the child, legislation is needed to decriminalize the acts mentioned in article 178 of the Criminal Code when they are performed under the aegis of the CNND.

### 3. Other acts of a nature to endanger life and physical health

66. Articles 43 to 56 of the Criminal Code prohibit homicide and bodily harm caused intentionally or unintentionally to an individual, irrespective of the age of the victim. The acts covered include murder, killing, causing bodily harm and assault. It would be preferable to

make specific provision to treat the killing of a newborn child as infanticide, punishable as a separate crime from ordinary killing; and that the definition of infanticide should be broadened to include acts of omission, maintenance and care concerning a newborn child for which the person concerned had responsibility in the event of the death of that child.

4. Acts of violence, abuse and other forms of exploitation

67. Article 67 of the Penal Code makes it a punishable offence to kidnap or cause to be kidnapped by violence, trickery or threats, arbitrarily to arrest or cause to be arrested, or to detain or cause to be detained, any person. The penalty is increased if that person has been subjected to physical torture and if such torture has caused the person's death. As in previous cases, these crimes are prohibited without distinction and irrespective of the status of the victim.

68. The same is true of article 68 of the Criminal Code, which declares punishable the same act committed with the intention of selling as slaves persons placed under the authority of the perpetrator or treating them as such. In view of the increasingly widespread occurrence of incidents such as sexual harassment, trafficking, the abduction of girls, the taking of children as hostages, the trafficking in children and their sexual exploitation for commercial and pornographic purposes, one cannot but wish for the elaboration of the existing penal provisions in order to provide better protection for children.

5. Acts of immorality against children

69. The protection of the morality of the child is ensured by articles 167 to 177 of the Criminal Code, which deal with indecent assault, rape and immoral acts. Unfortunately this protection is inadequate in cases of rape, since the marriageable age has been reduced from 16 to under 14 years. Incest, which is punishable under the headings of immoral acts and rape, should be defined as such. In case of indecency a pimp is not punished when, taking advantage of his activities, he takes sexual satisfaction for himself and "not to satisfy the passions of others".

6. Discrimination

70. In addition to the transitional Constitution, which guarantees equality of rights and equal protection of Congolese citizens before the law, article 75 bis of the Criminal Code makes manifestations of aversion and tribal or racial hatred expressed in writing, orally, by gestures or by any other means punishable offences (Ordinance-Law No. 66/342 of 7 July 1966). Article 3 of the same instrument provides for the dissolution of societies, clubs, associations or groups whose real purpose, activity or actions are motivated by racial, ethnic, tribal or regional discrimination. To combat discrimination based on the circumstances of birth, the Family Code has introduced an innovation in the form of the concept of "affiliation", thus abolishing the terms "natural child" and "adulterine child" used in the old Civil Code. Where the identity of the biological father cannot be established, the institution of "legal father" is applied.

71. However, in practice there remain forms of discrimination relating in particular to sex, social inequalities arising from living conditions, retrograde ancestral customs and certain negative perceptions in society of women in general and girls in particular. For instance, parents

give the schooling of boys preference over that of girls, while poorer and "disadvantaged" children are marginalized and have difficulty in obtaining access to schooling, health services and organized recreational activities.

## C. The Family Code

72. Law No. 87/010 of 1 August 1987 establishing the Family Code has the merit of "unifying and adapting" the rules affecting the rights of the individual and the Congolese family. It consists of four chapters, dealing respectively with nationality, individuals, the family and inheritance and gifts.

### 1. Nationality

73. This subject is governed by Law No. 81/002 of 29 August 1981 concerning nationality, which may be acquired by naturalization, choice or adoption (art. 9). A mother can also transmit Congolese nationality by descent (art. 5). The term "child born in Congo" covers any birth occurring on Congolese territory or on board a Congolese aircraft or vessel; the term "newborn child found in the Congo" covers any newborn child, born of unknown parents and found on the territory of the Congo or on board a Congolese aircraft or vessel (art. 3). Thus in certain cases Congolese legislation recognizes the principle of jus soli. These provisions are in line with the spirit of the Convention on the Rights of the Child. However, it must be mentioned that, notwithstanding this flexibility, the Congo still has to settle the problems of identification of the inhabitants of the regions bordering on Rwanda, Burundi, Angola and Sudan.

### 2. Individuals

#### (a) The name of a natural person

74. On this subject the Family Code amends Law No. 73/022 of 20 July 1973, relating to the names of natural persons. It provides that names must be drawn from the cultural heritage of the country (art. 58) and that any person who deliberately adopts a name in violation of those provisions, as well as the civil registry official who registers that name, shall be punishable by law (art. 70). The bearing of Christian names is prohibited by the Ordinance of 30 August 1972. These provisions are contrary to the spirit of the Universal Declaration of Human Rights, the transitional Constitution and the Convention on the Rights of the Child, which call for freedom of thought and religion. It is sometimes preferable to react by incentive as opposed to repressive measures. A policy of recourse to ancestral values (positive or humanizing) would also help to encourage the bearing of an authentic name, which has greater significance for a Congolese than a foreign name.

#### (b) Civil status

75. The law lays down a number of details relating to the civil status of individuals, and more specifically on the subject of certificates of birth, marriage and death (arts. 72 to 160). The birth of a child occurring on national territory must be reported to the civil registry within the 30 days

following the birth on pain of penalties (art. 116). However, owing to the lack of resources to organize implementation measures (establishment of a central civil status registry office) and adequate awareness promotion, the effort being made by the Government is still lacking in practical effect.

(c) Domicile and residence

76. Article 166 of the Family Code stipulates that the domicile of an emancipated minor shall be with its father or mother or with the person exercising guardianship over it, according to the case. In practice these provisions are often not applied; one major obstacle consists of certain ancestral patterns of living which still encourage mobility of residence, particularly that of children.

(d) Absence, disappearance, legal capacity and parental authority

77. The Family Code lays down provisions governing absence and, more particularly, disappearance - concepts which were absent from the former Civil Code. It fixes the age of legal capacity of a child at 18 years. But that same code still provides for the legal incapacity of a married woman, thus helping to confer an inferior status on women and preventing them from meaningfully playing their roles as mothers, wives and educators within the framework of parental authority.

78. A child may be emancipated on reaching the age of 15 years. It thus acquires full capacity on the same footing as an adult (art. 292). Emancipation may not be revoked (art. 290). A child who is a minor is placed under parental authority. In the absence of both parents it is placed under the guardianship of the family (family council); if it has no family, or the parents have been deprived of parental authority (art. 239), guardianship is assumed by the State.

79. The Convention concentrates entirely on respect for the rights of the child. However, the Family Code, like the African Charter, also emphasizes the duties of the child; the latter owes honour and respect to its father and mother (article 316 of the Family Code) and has responsibilities towards its family, society, the State and the community (article 31 of the African Charter). Consequently the person with parental authority may inflict reprimands and punishments on the child to an extent compatible with its age and the improvement in its conduct (article 326 of the Family Code). Unfortunately, the economic crisis which the Congo is undergoing is not of a nature to encourage family solidarity for the genuine acceptance of responsibility for the care of orphan and abandoned children. The guardianship of the State is often purely theoretical.

3. The family

80. The family is the natural base element of the human community; the primary environment in which the individual socializes; the product of marriage; and the legal framework for procreation. It is placed under the protection of the State. It consists essentially of a man, a woman and a being called a "child" - the subject of our concern here. The word "essentially"

(instead of "solely") is used here because the family in Africa in general and in the Congo in particular is conceived in a broad sense, comprising all relatives (see the preamble to the Family Code). Previously the legislation on the family was contained in Book I of the Civil Code. The Family Code has introduced a number of innovations in order to bring the legislation into line with authentic Congolese realities and the requirements of the modern world. A discussion of the points more specifically relating to the protection of the child follows.

(a) Engagement and marriage

81. The legislature has confirmed the constitutional principle of freedom of consent for both engagement and marriage (articles 351 and 402 of the Family Code) and lays down severe penalties for cases of violation. To ensure the unity and stability of marriages, it begins by regulating engagements, following which it lays down rules governing the substance and form of marriages. As regards the substance, the marriageable age is fixed at 15 years for girls and 18 years for boys (art. 352); the consent of the spouses is compulsory, even if they are minors (art. 351); finally, payment of at least part of the dowry is compulsory (art. 361). As regards form, in addition to the marriage celebrated before a civil registrar, the legislature has introduced marriage according to customary rules or celebrated within the family and confirmed by payment of a dowry. Monogamy is accepted as the legal form of marriage by implication, in particular, from the provisions suppressing bigamy (art. 408). Girls have not completed their secondary education on reaching age 15.

82. Nevertheless, this set of provisions does not sufficiently protect the rights of the child. The rules for the organization of engagements and marriages fall within the sphere of custom, some elements of which are retrograde and prejudicial, especially for girls; mention may be made of trial marriages, the right of an uncle to marry his niece (kituil), the excessively early age of capacity to marry, the fact that dowries are not regulated by the State and thus become a means of enrichment for the parents of girls in an urban environment, and, lastly, the proof of adultery committed by a man living in cohabitation (or in "bureaugamie", to use the Congolese neologism designating that practice) is difficult for the mistress to establish, since adultery must be "surrounded by circumstances which are offensive to the spouse" (art. 467).

(b) Divorce and separation of parents

83. To avoid dissension between parents, which makes for instability in the child, the legislature, in introducing the Family Code, opted for "remedial-type" divorce to replace the "sanction-type" divorce previously in force. Unlike the "sanction-type" system of divorce, a restrictive list of grounds for which is laid down by the legislature, the "remedial-type" system now in force provides for divorce only if there is objective evidence of the irremediable breakdown of the matrimonial relationship (arts. 549 and 550). Where a divorce takes place, the legislature protects the child by organizing its custody and parental visits (arts. 560 to 568) with its best interests in mind.

(c) Descent and affiliation

84. In addition to providing for recognition of the child by descent, the Family Code specifically reflects the basic political concept that "every child must have a father" (art. 591). The term "affiliation" is thus used to signify the compulsory recognition (enforced by penalties) by the father of his child born outside marriage (art. 614). If the paternal descent of a child born outside marriage cannot be determined, the court will designate a "legal father" from among the members of the mother's family (art. 64, para. 3).

85. The practice of adoption in the modern and legal sense is rare in Congolese culture, within which there is a preference for de facto custody of children. This situation gives rise to "fictitious" acceptances of responsibility which are prejudicial for the education, care and maintenance of the children concerned, especially in urban environments, where family solidarity is breaking down. The law does not provide a framework for acceptance of responsibility; this shortcoming is remedied by the guardianship procedure.

4. Inheritance and gifts

86. In this area children born within marriage, children born outside marriage but affiliated to the deceased during his lifetime and adopted children all participate in the inheritance on an equal footing (art. 758).

D. The Labour Code

87. Work performed by children is regulated by the Labour Code (Order No. 19/67 of 3 October 1967), which gives a child the capacity to enter into an employment contract (minimum age 14 years, maximum 18 years, according to the case); regulates conditions and hours of work and the nature of the work on which the child may be employed and stipulates the penalties applicable. Once again, and particularly in this area, practice falls far short of theory. Not only are the beneficiaries (parents and children) often unaware of their rights; in addition, current economic conditions make for violations in the sphere of child labour, which often takes place in the informal or unstructured sector or involves living by one's wits.

## II. ACTIVITIES, MEASURES AND OBSTACLES RELATING TO THE IMPLEMENTATION OF THE CONVENTION

Note. As we have said, this chapter is devoted to a critical review of each article of the Convention in order to assess the progress achieved by the Democratic Republic of the Congo in ensuring the enjoyment of children's rights. This chapter will be structured as follows: an unofficial summary of the article subject to critical review appears at the top of each section or subsection (in italics); this summary is followed by paragraphs containing information on the activities carried out, the measures taken and the obstacles encountered in the context of the implementation of the Convention.

## A. Definition of the child

### Article 1

*A child means every human being below the age of eighteen years, unless, under national law, majority is attained earlier.*

88. In the Congo, the age of 18 is the start of civil (Family Code, art. 219) and political majority (transitional Constitution, art. 6). Majority for penal purposes is set at 16 (Decree of 6 December 1950 on juvenile delinquency as subsequently amended by Ordinance-Law No. 78/016 of 4 July 1978) and majority for purposes of marriage or sexual majority at 14 years of age (Criminal Code, art. 167). The legislator uses the expression "apparently ... years old", which means that in cases of doubt or the absence of identity papers, a doctor must be applied to in order to determine the child's age.

89. At the Sovereign National Conference, the speakers proposed that the penal majority and the majority for purposes of marriage (capacity for sexual consent) should also be raised to 18 years of age at the time of the act;[17] this was partly to extend the protection of juvenile delinquents and child victims of rape and also in order to comply with rule 4 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), which states that "In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.)."

90. Since the age of marriage (for girls) and emancipation (for both sexes) of 15 years of age (Family Code, arts. 289 and 352) gives the parties concerned full legal capacity, the provisions of the Convention are not applied to them although they are still children. It would therefore be appropriate to raise the age of marriage for girls and of emancipation to 18 years of age, so that the protection given by the Convention can benefit a larger child population.

## B. General principles

### 1. Non-discrimination

### Article 2

*All rights apply to all children without discrimination. The State has the obligation to protect the child against all forms of discrimination and to take positive measures to ensure respect for his or her rights.*

91. There are certain forms of discrimination related to differences in the socialization of girls and boys from infancy. A girl, like her mother, has a lower social status, the repercussions of which are felt, inter alia, in education and in participation in public life. In June 1996, Parliament had 38 women members as against 699 men.[18]

2. The best interests of the child

**Article 3**

*Any decision concerning a child shall take into consideration his or her best interests. The State shall ensure the child such protection and care as is necessary when his or her parents or other individuals legally responsible for him or her are unable to do so.*

92. The best interests of the child must be the concern of any public or private authority, the parents and persons and institutions dealing with young people. The authorities must take them into account in all legal and social decisions and respect their rights, particularly the right to be heard, to express an opinion, in short, to be actively involved in their rights and not merely passive objects. A ruling has been handed down that a plaintiff who is a minor within the meaning of the law may in civil proceedings be represented by his or her parents or guardians (court of first instance of Matete, 22 February 1988, Jurdos, Wardship No. 1).

93. The Family Code notes in article 588 that decisions concerning custody of and right of access to children in the event of the divorce or separation of the parents should take into account "the best interests of the child". Similarly, article 18 of the Decree of 6 December 1950 on juvenile delinquency provides for the review of measures taken in the "interests of the juvenile delinquent". Where custody of children is concerned, for example, the district court of Gombe (24 January 1992, Registre de la Jurisprudence Zaïroise, 1992, p. 51), hearing a divorce case, gave custody to the father on the grounds that he had the financial means to ensure the material well-being and the upbringing of the children. In our African societies, where it is often the man who has the material and financial means, judges tend to give the custody of children to the father on that criterion alone, although the law provides for the possibility of the father paying the mother maintenance where she has custody of the children. The judge must take the child's opinion into account if he or she has the necessary discernment, and also maternal affection, which is so important for the child's psychological balance.

94. Of 122 cases of divorce recorded by the district court of Lemba from 1993 to 1994, in 30 cases custody of the children was awarded to the father and in 14 to the mother. As regards justice for juvenile delinquents, measures are always obligatory (there are no voluntary measures); this can hardly be said to encourage the participation of the parents and children concerned in the taking of decisions and their implementation.[19] Considerable powers of discretion are given to a judge who is not specialized in the protection of young people. Such a judge frequently fails to seek the necessary information for ensuring that the measure to be taken is proportional to the circumstances of the offenders and the offences (The Beijing Rules, rule 5).

95. To seek the well-being and the better interests of the child does not mean ignoring the rights and needs of others and of society. The Family Code in article 326 and the African Charter on the Rights and Welfare of the Child in article 31 note that the child not only has rights but also duties, in particular, to work for the cohesion of the family, to respect its parents, superiors and elders, to serve its community and to preserve and strengthen solidarity, cultural values and national independence.

### 3. The survival and development of the child

**Article 6**

*Every child has the right to life and the State has the obligation to ensure the survival and development of the child.*

96. This point is discussed in chapter 1, sections B.1 to B.3 (paras. 64 to 66).

### 4. Respect for the opinion of the child

**Article 12**

*In any question or proceedings affecting the child, he or she has the right to express his or her opinion freely and for it to be given due weight.*

97. Traditional African culture in general and Congolese culture in particular makes for conformity in behaviour, the notion of collective responsibility and the principle of linear authority - of the father over the son and the elder over the younger. Respect in traditional society is more than a rule for living; it designates each individual's place and role.[20] This notion has aspects which are positive (social cohesion), but also negative, consisting in preventing children from exercising the freedom of expression, creativity, initiative and personal responsibility which favour the development of the individual. This requires the provision of information and the creation of awareness among adults and authorities in order to modify the way in which they regard children and interpret their conduct.

98. For other considerations, see subsection B.2 on "The best interests of the child" (paras. 92-95) and the subsection on "Administration of juvenile justice" (paras. 181-185).

## C. Civil rights and freedoms

### 1. Name, nationality and preservation of identity

**Article 7**

*The child has the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*

**Article 8**

*The State has the obligation to preserve and if necessary to re-establish the fundamental elements of the child's identity (including name, nationality and family relations).*

99. The reader should first of all refer to chapter 1, section C, entitled "The Family Code" which, among other things, deals with the points mentioned in articles 7 and 8 of the Convention

(paras. 72-85, above). With regard to the right of the child to know his or her parents, it should be added that the Convention rightly retained the phrase "as far as possible". Procreation within marriage is the accepted norm; procreation outside marriage is deviant behaviour that could not be legalized on the pretext of protecting the child by "affiliation" or by the obligatory recognition by the father of a child born out of wedlock. In a society in which people attempt to make "bureaugamie", or "Congolese-style adultery", (see paragraph 82, above) legally acceptable by describing it as "de facto marriage", the introduction here of discrimination on grounds of sex (affiliation concerns men only) would risk seriously damaging the institution of marriage and therefore the family. Consequently, the Sovereign National Conference, having considered this issue, proposed "to refer to the Constitution and to other international legal instruments which establish equality between men and women, in order to ensure that the recognition of a child born out of wedlock should be a parent's right, rather than an obligation" (see footnote 17).

100. It is difficult for anyone to assert their rights without identification. Congo must endeavour to clarify the organization of people's civil status records, on which population policy, the organization of censuses and reliable elections depend. The most recent population censuses were made over 15 years ago. The State will avoid accommodating persons of uncertain identity within its borders. To that end Law No. 81/002 of 29 August 1981 concerning nationality must be effectively implemented in order to expedite action on disputes over nationality, since it provides sufficient protection for the child's identity.

101. Requests for name changes or alterations may be heard by district courts in cases where a name is offensive, humiliating, provocative or insulting (articles 58 and 64 of the Family Code). The unlawful use of a name is punishable by the same courts.

### 2. Freedom of expression, religion and association

102. These freedoms are guaranteed by articles 10 and 17 of the transitional Constitution (see paragraph 62, above); they are also provided for in law, including those instruments mentioned below.

**Article 13**

*The child has the right to express his or her views, to obtain information and to impart information and ideas, regardless of frontiers.*

103. Ordinance-Law No. 2/04 of 1982, as amended by No. 96/002 of 22 June 1996, establishes the modalities of operation of the press, otherwise known as the freedom to express opinions and feelings through speech, writing or images, provided that public order, the rights of others and the morals are respected. The press and the media in general have the following functions: information, education, recreation or leisure and the promotion of social cohesion. Unfortunately, these objectives are rarely achieved due to the lack of adequate resources (material, financial and human).

**Article 14**

*The State shall respect the right to freedom of thought, conscience and religion, with respect for the role played by parents in providing direction.*

104. Ordinance-Law No. 71/012 of 31 December 1971, as amended by No. 79/002 of 3 January 1979, regulating the practice of religion, stipulates in article 1, paragraph 1, that there is no State religion; paragraph 2 stipulates that all persons have the right to freedom of thought, conscience and religion. They may express that right in public or in private through worship, teaching, etc., provided that the public order and morals are respected.

105. The objectives of the 1979 amendment to the 1971 ordinance are, among other things, to curb the anarchic proliferation of religious sects and churches and to prohibit all collections of charitable donations on behalf of sects or churches not registered as legal entities. The Government will ensure the effective implementation of these provisions in order to combat phenomena such as religious sects which exploit children by leading them astray from their schooling, from obedience and affection towards their parents and from solidarity with family and society. It will also combat (with information and repression) sects which endanger the health, education and morality of the general population, and children in particular. As a result of their status as minors, children are sometimes victims of the decisions of the adults who look after them (Jehovah's Witnesses, for example, who refuse the giving of blood transfusions).

**Article 15**

*Children have the right to assembly and to join or form associations.*

106. Ordinance-Law No. 66/342 of 7 June 1966, on the suppression of racism and tribalism, prohibits associations and groups promoting discrimination on racial, ethnic, tribal or regional grounds. It also prohibits political associations. The latter provision, adopted during the period of dictatorship, has been amended as part of the process of democratization and transition to a multiparty system in the Congo which began on 24 April 1990. Ordinance-Law No. 68/193 of 3 May 1968 prohibits associations established to cause injury to persons or property (art. 3).

107. As can be seen, the exercise of fundamental freedoms is theoretically respected and protected by laws which should serve to punish the perpetrators of violations of those freedoms.

3. The protection of privacy

**Article 16**

*"1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.*

*2. The child has the right to the protection of the law against such interference or attacks."*

108. No child shall be subjected to interference with his or her privacy (including family, home and correspondence), nor to unlawful attacks on his or her honour and dignity. These rights are guaranteed by the transitional Constitution, articles 22 to 24, and by specific legal provisions (including articles 69 and 70 of the Criminal Code), which punish any person entering someone else's private home against the latter's wishes and without legal authorization.

109. The child needs some privacy in his or her development to provide him or her with social, psychological and emotional security. Whereas in the developed countries there is a fear of the invasive spread of official monitoring of the private lives of children, in the developing countries the lack of necessary information to guide that monitoring is more of a problem. Since it is difficult to obtain information on children in difficulty, people working in that area tend to make generalizations about the disadvantaged situations of those children, which makes it more likely for them to be labelled as deviants. The stigmatization of street children reinforces their marginalization.

110. With regard to juvenile justice, in 1950 the legislator made it illegal for judicial and political/administrative authorities to include information in criminal records on juvenile criminals against whom legal proceedings have been brought, and also to withhold such information in criminal justice proceedings.

4. Access to information

**Article 17**

*The State shall guarantee the child's access to information and material from a diversity of sources and encourage the media to disseminate information of social and cultural benefit to the child. The State shall take measures to protect the child from material injurious to his or her well-being.*

111. Steps should be taken at government level to support and enhance radio and television programmes for children. Children find it difficult to obtain books, magazines, newspapers and other written material because they are too expensive. Price liberalization in this sector would be a sound policy likely to lead to improved access to information.

112. Whenever embassies and some parishes of the Catholic, Protestant and Kimbanguist churches organize discos, clubs and reading rooms, the State will try to support and participate in

such initiatives. The Board of Censorship lacks the necessary support to carry out its functions, which include monitoring broadcasts and written material available to the public and to children in particular.

## D. Family environment and alternative care

### 1. Family reunification

**Article 9**

*The child has the right to live with his or her parents unless it is adjudged to be in his or her best interests not to do so; the child also has the right to maintain contact with both parents if he or she is separated from one or other of them.*

113. The child not only has the right to know its parents; it also has the right to live with them. With that in mind, the State should do everything within its power on one hand to avoid the separation of children from their parents or guardians, and on the other to facilitate the unification and reunification of families, by not granting divorce too easily, by organizing the return of children who have been illegally transferred abroad, by authorizing visits and contacts between children and parents, for instance when either children or parents are in detention or when parents are forced to move in the line of duty. Statistics from Lemba district court (1993-94) indicate that of 200 divorce cases brought before the court, 122 resulted in divorces, which means that 60 per cent of couples were granted a divorce. This figure is too high, particularly in view of the fact that in order to discourage the break-up of families, the Family Code has replaced the "sanction-type" divorce with the "remedial-type" divorce. It provides for several reconciliation mechanisms so that divorce should occur only when those concerned are convinced that the marriage has irremediably broken down (see also paragraph 83 above). Custody of the child and visiting rights are regulated in the child's best interests.

114. The transitional Constitution stipulates in article 20 that "the family is placed under the protection of the State. It is organized in such a way as to ensure its unity and stability". Unfortunately, this protection is merely de jure and not de facto due, on one hand, to the weight of ancestral traditions and, on the other, to the State's inability, in material and financial terms, to provide help to families. Legal protection alone is not enough to prevent the break-up of families; it needs to be backed up with parallel social and economic measures. Such measures will be designed to combat poverty among families, unemployment among fathers, polygamy and the under-development of the country, particularly of rural areas. These are some of the factors that make for the separation of children from their parents.

**Article 10**

*The child and his or her parents have the right to leave any country and to enter their own for the purpose of family reunification or to maintain relations with each other.*

115. Article 33 of the transitional Constitution protects the rights and legitimate interests of Congolese nationals resident abroad. Similarly, foreign nationals in the Democratic Republic of

the Congo enjoy the same rights and freedoms as Congolese, under the conditions determined by treaties and laws, subject to reciprocity. They must comply with the laws and regulations of the Republic (art. 34).

**Article 11**

*The State has an obligation to combat the illicit transfer and non-return of children abroad carried out by a parent or guardian.*

116. The State participates in efforts to combat the trafficking of women and children as a party to the relevant international legal instruments. It has, for instance, ratified the Convention on the Elimination of All Forms of Discrimination against Women (Ordinance-Law No. 85/040 of 6 October 1985).

117. Solidarity within families, coupled with the poverty affecting those families, explains why many parents agree to place their children under the guardianship of another member of the family, often someone who is well-off or in paid employment. Some workers become guardians in order to increase their incomes through welfare benefits linked to the number of children in their care (family allowances, for example). However, this is often a "fictitious" guardianship, since the children concerned continue to live with their parents, who look after their daily needs, and the guardian helps them on a merely sporadic basis. The Matete district court granted 76 cases of guardianship out of 240 legal proceedings initiated, i.e. 30 per cent of cases (1995 register of civil cases Nos. 2800 to 3040); the corresponding court in Lemba indicates that 57 cases of guardianship were granted to members of the same family out of 79 cases of guardianship registered in 1995.

2. Parental responsibilities

**Article 18**

*Both parents have the primary and joint responsibility for the upbringing of the child, and the State must help them to exercise this responsibility. The State shall render parents appropriate assistance in the upbringing of the child.*

118. For the upbringing and development of the child, he or she needs a family environment which provides security in material, educational, moral and spiritual terms. Both parents have the primary and above all joint responsibility for ensuring that the child has that environment. With that in mind, the legislator decided to replace paternal authority by parental authority (article 317 of the Family Code). The contribution of each parent varies according to their respective capabilities and means. All legal precautions are taken to ensure that during the marriage, in the event of a breakdown in the marriage or if one or both parents should die, the best interests of the child are protected (see also subsection B.2, paragraphs 92 to 94, above).

**Article 5**

*The State shall respect the rights and responsibilities of parents and members of the extended family to provide guidance in a manner consistent with the evolving capacities of the child.*

119. In view of the disintegration of structures of family solidarity in non-customary environments, and in an attempt to integrate the ancestral mode of organization of families into that of modern urban settings, as part of a policy of seeking authenticity, the legislator of the Family Code has introduced a system of bilinear parentage to replace systems based on paternal or maternal linearity. This is a new conception of the family, placed under the domestic authority of the head of the community or household. The household means the married couple, unmarried children in their care, as well as any other persons living regularly in the family house and towards whom the spouses have an obligation of maintenance (article 700 of the Family Code). The obligation to provide assistance extends to relatives and in-laws.

120. The child growing up in a family context of this nature can expect to be given support in his or her upbringing and with his or her evolving capacities, provided this takes place with respect for the public order and morals. Parents shall exercise their authority over the child with humanity and respect for his or her rights. Failure to do so is punishable by law, for instance by the deprival of parental authority (art. 319). Article 62 of the Family Code punishes all persons who abuse their authority by subjecting the child to exploitation of any kind.

**Article 27**

*Every child has the right to a standard of living adequate for his or her physical, mental, spiritual, moral and social development. The parents have the primary responsibility to secure this standard of living. The State has the duty to ensure that this responsibility can be, and is, fulfilled. The State's responsibility can include material assistance to the parents and to their children.*

121. Faced with numerous and urgent problems to resolve, the State seems increasingly to be shifting its duties and responsibilities on to parents and all persons effectively or legally responsible for a child's upbringing. Left to fend for themselves, these persons must meet the cost of the child's food, education, health care, transport, etc.; furthermore, many parents are unemployed or have not been paid for several months.

122. In the Congo, GDP growth has remained very low compared to population growth rates. It fell from 3.9 per cent in 1994 to 0.6 per cent in 1995, with a population growth rate of 3.1 per cent. The rate of inflation is rising year by year: 9,769.9 per cent in 1994 and 540 per cent in 1996. In addition to currency inflation, there is also currency fluctuation, with the exchange rate in United States dollars fluctuating continually (set at 98.8 per cent

in 1994, it exceeded 100 per cent in October 1996). All this is indicative of a standard of living of the population close to the poverty line.[21] Under these conditions, it is difficult for parents and guardians of children to fulfil their duties with success and dignity.

3. Children deprived of a family environment

**Article 20**

*The State has an obligation to provide special protection for the child deprived of his or her family environment and to ensure that he or she can enjoy the protection of a foster family or placement in a suitable institution. Any steps taken in connection with this obligation shall pay due regard to the child's cultural background.*

123. A child may be deprived of its original family environment following separation from its parents as a result of abandonment, war, deportation, imprisonment, for work- or service-related reasons, or due to divorce, separation, guardianship, adoption, death, judicial or administrative measures, etc. For all these cases, the legislator provides, among other things, for guardianship as a mechanism to take care of minors whose mother and father are unknown, abandoned children, orphans with no family and, if appropriate, minors whose parents are deprived of parental authority (article 239 of the Family Code). These minors, known as "wards of the State", are placed by the guardianship council with delegated guardians, natural or legal persons, associations or charitable or State or private educational institutions registered as legal persons (art. 239). The delegated guardian must take care of the upbringing and education of the minor.

123a. In addition to the guardianship of the State, any child not yet emancipated and without either a mother or a father capable of exercising parental authority is provided with a representative guardian (art. 222). If a parent is imprisoned, Ordinance-Law No. 344 of 17 August 1965 on the prison regime provides for a special regime for mothers with infants (children under 6 years of age) and authorizes visits in order for contact to be maintained between the detainee and his or her family. It is very important to organize support and assistance for the families of detained persons.

4. Adoption and other measures

**Article 21**

*In countries that recognize or permit adoption, it shall only be permissible when it is in the best interests of the child and all the authorizations and necessary guarantees from the competent authorities have been obtained.*

124. The legislator has also provided for adoption in order to give the child a substitute family environment. In addition, it allows the child to prove a relationship of descent from his or her father (article 630 of the Family Code) by making it an obligation for the father to recognize his child born out of wedlock through "affiliation". If the parents are divorced or separated, it organizes guardianship and visiting rights concerning the child. According to the register of civil cases from the Lemba district court, a total of 636 cases brought between 1993 and 1994 resulted in 9 verdicts establishing descent, 17 establishing affiliation and 1 establishing a "legal father".

**Article 19**

*The State must protect the child from all forms of maltreatment by his or her parents or by any other person who has the care of the child; it shall establish appropriate social programmes to prevent maltreatment and to provide treatment for the victims.*

5. Maltreatment of the child

125. The child may suffer from maltreatment by his or her parents, members of the family, care workers and teachers, public authorities and adults in the society to which he or she belongs. Maltreatment covers a range of behaviour from physical or mental violence to a wide range of different forms of injury, abuse, neglect, negligent treatment or exploitation.

126. In industrialized societies, maltreatment is largely caused by the extravagance and individualism which characterize people's behavioural habits, while in the developing countries poverty, the economic crisis and ignorance are the main causes of maltreatment, which is predominantly an urban phenomenon and manifests itself as neglect, deprivations of all kinds, malnutrition, a lack of adequate care and attention and exploitation (for instance, by forcing the child into vagrancy, prostitution, begging and retrograde ancestral practices).

127. Article 326, paragraph 4, of the Family Code gives the right to the person exercising paternal authority "to reprimand or punish the child to the extent compatible with its age and the improvement in its conduct". Unfortunately, some parents, and "fathers" in particular, exceed the boundaries of this description by depriving the child of food or clothing for lengthy periods or by administering beatings with a belt or stick.

128. Article 319 of the Code provides that the father, mother or any other person exercising parental authority may be deprived of it where, for instance, through ill-treatment, abuse of authority, blatant misconduct or grave negligence he or she endangers the health, security or morals of the child. Examples we may cite are a father or uncle who, abusing his authority, pushes up the bride price, thus jeopardizing the stability of the daughter's marriage; or again, customs that subject a girl child to retrograde practices detrimental to her physical integrity, in particular incisions resulting in mutilation of certain of her intimate organs.

129. In face of all these evils there is a manifest lack of appropriate structures for child protection, such as an office for referral of children in need of protection, which might be composed of officers of the judicial police and social workers specializing in protection of young persons. School welfare services, socio-psychological medical services, and school medical services, equipped to prevent and detect cases of abuse and exploitation of children and treat the victims, need to be created or strengthened.

130. The criminal code penalizes ill-treatment or maltreatment taking the form of offences against physical integrity, indecent assault and immoral acts. More effective protection of the child calls for penalization of ill-treatment of children in all its forms.

## E. Health and well-being of the child

### 1. Health

**Article 24**

*The child has the right to enjoy the highest possible level of health and have access to the medical services. The State shall lay particular stress on primary health care and preventive care, on public information and on reduction of child mortality. States shall encourage international cooperation in this regard and strive to ensure that no child is deprived of the right to have access to effective health services.*

131. Decent housing, drinkable water and a healthy environment are among the elements constituting the quality of life, and particularly the health, of populations. To meet those health requirements, and in line with the objectives of the International Conference on Assistance to African Children (Dakar, 25-27 December 1992), the State has drawn up an action plan for the benefit of children between now and the year 2000. In evaluating this plan, the national survey on the situation of children and women in Zaire in 1995 (ENSEF/Zaire-1995) concluded as follows in its final report dated February 1996:

(a) In the housing sphere there was marked overcrowding; nearly 70 per cent of households (64.4 per cent in urban and 70.7 per cent in rural areas) were occupying dwellings with less than three rooms, whereas the average size of households was 5.7-6 persons;

(b) With regard to clean drinking water, about 59 per cent of households (11 per cent in town and 74 per cent in rural areas) had no drinking water;

(c) Where environmental health is concerned, the survey found the environment unhealthy inasmuch as 82 per cent of households (47 per cent in towns and 97 per cent in rural areas) were using unhygienic latrines or no latrines at all. Furthermore, 66 per cent of households were dumping their garbage in the open;

(d) In conclusion, 80.6 per cent of households (78.6 per cent of the population) were living in unfavourable social and hygienic conditions. In other words, the State's task in relation to the objectives of the 1992 Dakar conference and to its own goals has hardly begun.

132. To assess the socio-economic level, ENSEF/Zaire-1995 divided the households surveyed into three categories:

(a) The most disadvantaged, constituting 80.6 per cent, or 78.5 per cent of the total population;

(b) The intermediate level, comprising 11.4 per cent, or 12.8 per cent of the total population;

(c) Those enjoying good living conditions, representing 8 per cent, or 8.6 per cent of the total population.

133. Again according to the same survey findings, the infant mortality rate showed a worsening trend: it rose from 137 per thousand in 1984 to 148 per thousand in 1995.

134. In 1981 the State introduced primary health care as a national health strategy by State decision No. 10/CC/8 of the Central Committee of the Peoples' Revolutionary Movement. This new policy was given effect by the creation throughout the country of 306 health zones (autonomous operational units directed by a health zone chief medical officer).

135. In the area of promotion of feeding and nutrition, a Nutritional Planning Centre (CEPLANUT) has been set up. Evaluating the activities conducted under this head, ENSEF/Zaire-1995 determined among other findings that malnutrition was more widespread in economically deprived households than in those which were more affluent.

136. With regard to immunization coverage of populations at risk, a survey of women with children aged from 0 to 11 months, revealed a substantial difference between women with secondary or higher education (44.2 per cent) and those who had had no schooling (27.4 per cent). This highlights the impact of school education on the prevention of diseases such as measles, diphtheria, poliomyelitis, tuberculosis, whooping cough, neonatal tetanus, diarrhoeal diseases, acute respiratory infections, malaria, monkeypox and viral haemorrhagic fevers. The Expanded Programme of Immunization has decided also to attack hepatitis, meningitis and AIDS, the most fearsome pandemic scourge of the twentieth century, which is on the increase in Africa, including the Congo. Mother and child centres have been established for the support and promotion of women and the family as part of the maternal and child health and family planning programmes.

137. The Congo has committed itself to a policy of family planning: to that end, it applies the charter of 12 rights in regard to sexuality and reproduction adopted in 1995 by the International Planned Parenthood Federation, of which it is a member.

138. Instead of improving, however, the indicators in the health field, as also in that of education, are pointing to red. The State will have to make great efforts in those areas or risk missing the target for the year 2000.

### 2. The handicapped child: rehabilitation and follow-up

**Article 23**

*A handicapped child has the right to special care and to appropriate education and training that will enable him to lead a full, decent and dignified life and attain the highest possible degree of autonomy and social integration.*

139. There exists a system of special education designed for persons of all ages suffering from one or more handicaps (mental, psychomotor, sensory, psychosocial, locomotor, etc.) that adversely affect one or more of their adaptive functions, with particular stress on training for their integration or reintegration into society. Like the educational system in general, special

education is faced with difficulties from the viewpoint of educational, administrative, legal and financial management in a socio-political context dominated by a severe economic and political crisis in face of which education and health, as government priorities, are somewhat neglected.

140. Many children drop out of school because they are forced to take the normal curriculum although suffering from mental handicaps. Hence the need for many more medico-psychological and school guidance centres equipped to identify, to give guidance (palliative or preventive care), to provide treatment and to provide follow-up services for children having difficulty with their schooling or social adjustment.

141. More particularly, in the State care and education establishments (see paragraphs 187 and 188 below) provision will have to be made in the educational programme for special teaching and for remedial classes. This formula should be applied generally in all the country's large schools. Educational and social assistance to the handicapped is a means of preventing them from falling into deviance and delinquency. In the criminal sphere, mental handicap may exempt an offender partially or even completely from responsibility (see Code of Criminal Procedure). Far from attracting benevolent attention, a physical or mental handicap is sometimes interpreted from the sociocultural viewpoint as a curse, a state of bewitchment or possession. Such retrograde attitudes contribute to the handicapped person's social exclusion (child sorcerers belong to this category).

142. Efforts are indeed being made in the governmental and private spheres towards rehabilitation of the handicapped (mental, physical or social). Governmental centres include the CENAPHI (National Centre for Vocational Apprenticeship) group, which has branches in several regions of the country. Kinshasa has 142 associations for the handicapped; their activities are coordinated by the Congolese Federation for Handicapped Persons. In the private sphere there exist a number of centres, some of them subsidized. They are generally multi-purpose centres designed to cater for the varied needs of the handicapped, such as vocational apprenticeship, physical or mental rehabilitation, or schooling for deaf mutes.

143. The indicative figure given by the World Health Organization for the number of handicapped persons comprises one tenth of the population. In the Congo the trend is upwards owing to ethnic conflicts and war situations. To those factors must be added poor health conditions and the decline of immunization coverage, with a consequent increase in the incidence of poliomyelitis and other infectious diseases.

**Article 25**

*A child who has been placed by the competent authorities for the purposes of care, protection or treatment has a right to periodic review of the placement.*

144. Supervision of placement centres and follow-up of children need to be organized. There is currently a proliferation of NGOs and placement centres for young persons in difficulty. Some of them exist only in name and have no real activities on the ground. This situation highlights the need to set up a body for certification of facilities that take in, educate and train children in difficulties. This will obviate ill-thought-out and poorly coordinated activities likely to do the children more harm than good. Design, coordination, awareness-promotion and

follow-up in respect of activities on behalf of handicapped persons are tasks of major importance.[22] There can be no valid review of decisions taken with regard to children in placement without prior assessment and follow-up of those decisions. It is therefore difficult for us to provide statistics on children placed for purposes of protection.

### 3. Social security

**Article 26**

*The child has a right to benefits from social security, including social insurance.*

145. The general social security system is established by Organizational Decree Law (Social Security) of 29 June 1961 (see Moniteur congolais, No. 17, 1961). This Decree organizes social security for the benefit of wage earners and comparable categories of employee and their dependants, subject to no discrimination whatsoever.

146. Members of the judiciary, State officials and supervisors, and personnel of the gendarmerie and army are governed by specific instruments or statutes. Their dependants are children born within and out of wedlock; children that the employee has adopted; children of whom the employee has custody or legal parenthood; and children to whom he owes maintenance in accordance with the Family Code (see article 931 of that Code, which amended article 4 K of the Labour Code).

147. A child is taken into account if unmarried and under the age of majority (18 years), under 25 years old if a student, and without age limit if incapable of performing a gainful activity.

148. Social security for the above-listed persons covers the following areas: illness, disability benefit, accidents, family allowances, etc. Circular END/BCE/EPS/001/812/78 of 1 April 1978 establishes a school insurance scheme for schoolchildren and students.

## F. Education, leisure and recreational activities

### 1. Education

**Article 28**

*The child has a right to education. The State shall make primary education compulsory and free, encourage the organization of different forms of secondary education and make them accessible to every child, and make higher education accessible to all on the basis of the capacities of each individual. School discipline shall have respect for the rights and dignity of the child. To ensure respect for this right, States shall engage in international cooperation.*

149. Education is a right of human beings in general and of the child in particular (see inter alia the Universal Declaration of Human Rights). In the Congo this right is guaranteed by the transitional Constitution (arts. 20 and 21) and formalized in Framework Law No. 86/005

(national education) of 29 September 1986 (Journal officiel, special issue, July 1989). This law, which has not come into force in the absence of implementing measures, makes schooling compulsory for boys and girls until they have completed their fifteenth year (art. 115). The States General of National Education provide for primary education to be free of charge.

150. The International Conference on Assistance to African Children, held in Dakar from 25 to 27 November 1992, determined that the educational objective to be attained by the mid-decade (1995) should be the strengthening of basic education with a view to reducing by one third the gap:

(a) Between, on the one hand, the primary school enrolment and retention rates in 1990 and, on the other, the enrolment and retention of at least 80 per cent of school-age children projected for the year 2000;

(b) Between the school enrolment and retention rates for boys and girls respectively recorded in 1990.

151. In November 1992, with a view to the attainment, among other objectives, of that of the Dakar Conference, the State drew up a national action plan, to be implemented by the year 2000, for the survival, protection and promotion of the mother and child couple. In regard to education the overall objective is "to promote education for all by the year 2000". The specific objectives for primary education include:

(a) Halting the current decline in the school enrolment rate (76 per cent at the time) with the view to attaining 100 per cent by the year 2000;

(b) Making basic education compulsory;

(c) Raising the primary school enrolment rate for girls from the current 42 per cent to 100 per cent by the year 2000;

(d) Reducing illiteracy among women from 56 per cent to 0 per cent.

152. In evaluating the educational objectives, ENSEF/Zaire 1995 cites the following statistics:

Net school enrolment rates

| 1978-79 | | | 1987-88 | | | 1994-95 | | |
|---|---|---|---|---|---|---|---|---|
| Boys | Girls | Total | Boys | Girls | Total | Boys | Girls | Total |
| 86.5 | 57.8 | 71.8 | 66.4 | 51.1 | 58.7 | 62.4 | 54.6 | 58.5 |

Clearly these rates indicate a downward trend, with a degree of stagnation for girls. The decline in the school enrolment rate must be resulting in an increase in the illiteracy rate, which the same information source puts at 17.5 per cent for men and 45 per cent for women, the rural areas being the most affected.

153. With regard to primary school retention rates, the same survey, taking as a parameter the fifth year of primary schooling, produced the following figures:

| | 1987-88 | | | 1994-95 | | |
|---|---|---|---|---|---|---|
| | Boys | Girls | Total | Boys | Girls | Total |
| Town | | | | 77.8 | 42.8 | 60.3 |
| Country | | | | 16.3 | 13.9 | 15.1 |
| All areas | 56.8 | 45.6 | 51.2 | 27.9 | 22.7 | 25.3 |

154. The above two tables show not only that school enrolment is declining, but also that many children do not get as far as the beginning of the fifth year of primary schooling. This situation, which is gloomier for girls than for boys living in both urban and rural residential environments, appears still worse when considered according to socio-economic bracket and sex:

| Socio-economic category | Boys | Girls | Both sexes |
|---|---|---|---|
| Low | 58.6 | 47.9 | 53.3 |
| Middle | 73.8 | 75.7 | 74.7 |
| High | 93.8 | 91.1 | 92.2 |
| All categories | 62.4 | 54.6 | 58.5 |

Thus the school education objectives determined in 1992 by way of response to the global objective of the Dakar Conference are far from having been attained.

155. Among the ills besetting the educational system we must stress the lack of basic school facilities capable of meeting the demand of a population whose most salient characteristic is youth, 58.9 per cent of the inhabitants being under 20 years old and 19 per cent under five years old.[23]

156. The worsening of the economic crisis owing to "congolization" of staff, and to the retrocession and plundering of enterprises, not to mention political instability, is having a marked impact on the State budget and the share allocated to the education sector. The state of public finances is worsening yearly: 500 million United States dollars on an annual average prior to 1990 and 119.7 million in 1996, with a delivery rate of 23.7 per cent in the first quarter of that year (see Government's national report to the Stockholm Congress, 1996, cited in note 21 above). For the past four years the State has been shifting the burden massively on to parents, who must finance the running of schools and the teachers' pay. In short, they must meet very heavy school expenses calculated in hard currency, whereas most heads of family are unemployed or have not been paid for several months.

157. The result is that children, especially boys, drop out of school from the age of 12 or 13 years onwards to make a living by their wits. The "mine children" of Kasaï, the "bana lunda" of Kwilu, the car washers, the youngsters of or on the streets, etc., belong to this category of children. That might explain the 50 per cent reduction in the disparity between the school attendance rates for the two sexes, which fell from 27.5 per cent in 1987-88 to 7.5 per cent

in 1994-95, to the advantage of girls. Moreover, the census of Kinshasa street children and youngsters shows totals of 8,567 boys (or 87.3 per cent) as against 1,249 girls (or 12.7 per cent),[24] which bears out our supposition.

**Article 29**

*The State shall endeavour to promote the development of the child's personality and potentialities. It shall prepare the child for active adult life in a free society and encourage in him or her respect for his or her parents, identity, language and cultural values, as also for the culture and values of others.*

158. The new orientation mapped out for schools by the States General of Education (1995) calls for partnership at the internal and external levels. It enunciates the concept of the so-called "village school" aimed at involving the community in the assumption of responsibility for children's education and in the preparation of teaching programmes that take into account the real needs of the populations, with due regard to local and regional specificities.

159. Given the extensive development of the informal economic sector, which is proving the salvation of many economic actors, the young need to be "armed" with knowledge in a range of fields so as to be able to cope with the new economic environment. To that end, professionalization at all levels of education is imperative.

(a) Children belonging to minorities

**Article 30**

*"In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."*

160. Children belonging to minorities (Pygmies and others) are integrated into the national education system in which French dominates as a national language. Like some indigenous (less acculturated) children, they are sometimes disadvantaged by having to memorize and repeat "like parrots" in a language other than their mother tongue.[25] However, the opening of schools teaching in foreign languages (English, Arabic, Spanish, etc.) is authorized. The same applies to utilization of foreign languages: in court, for example, litigants may use the language of their choice.

(b) Education of women

161. Women's education has been given a prominent place as the twentieth century draws to a close. One may cite, merely as an indication, the World Conference on Women (Beijing, 1995), the States General of Education in Zaire[26] and the Forum on Women (Kinshasa, 1996), which, moreover, stressed the notion of the "girl child" enunciated at the Beijing Conference. This category (girls aged from 5 to 19 years) comprises 34 per cent of the Congolese female

population.[27] The African Charter on the Rights and Welfare of the Child[28] adopted by the Congo in 1990 also lays stress on the education of gifted and disadvantaged female children and recommends that girls who become pregnant should have the possibility of completing their education (arts. 11 and 12). This upsurge of concern for the importance of the education of women in general and girls in particular is justified by the important role of the female component of society in national and global development. "To educate a woman is to educate a nation". Women themselves are becoming ever more aware that their human and social development is bound up with school education.

162. The disparity between the number of educated women as compared with men increases with age and the level of instruction attained: 23.8 per cent of males against 18.4 per cent of females at the primary level, 10.7 per cent of males against 4.7 per cent of females at the secondary level, and 0.6 per cent of males against 0.1 per cent of females at the higher level. The reasons for this discrimination are complex: negative and retrograde social representations of women; early marriage and pregnancies; domestic and agricultural work: the burden of working in the economy in addition to household duties; and sexual harassment.

163. All the above considerations point to the urgency of the need in the Congo to halt the deterioration of the situation in regard to the quality of teaching and the numbers of children benefiting from it, especially girls. Moreover, educational failure at any level may contribute to creating or fostering an environment conducive to the sexual exploitation of children (particularly girls) for commercial purposes.[29]

### 2. Leisure, recreational and cultural activities

**Article 31**

*The child has a right to play and to participate in cultural life and the arts.*

164. With particular reference to the sphere of culture and leisure, Ordinance-Law No. 23/216 of 4 May 1959 on public cinema screening prohibits juveniles under 18 years of age from attending cinema screenings open to the public (art. 1), the showing of trailers and films not being permitted without authorization. Articles 4 and following provide for the creation and organization of the Board of Censorship for films and other forms of entertainment. With regard to music, the mandate of the Control Board provided for in Ministerial Order No. 295 of 23 August 1967 was recently extended by Decree 003 of 21 February 1996 establishing the National Board for censorship of songs and other forms of entertainment.

165. On the ground, a regrettable effect of the process of democratization has been that certain citizens ascribe to basic freedoms an absolute value despite the limitations imposed by domestic and international legal instruments. In particular, they write, display, sing, dance and screen scenarios and shows of a non-educative nature liable to incite the population, and especially the young, to violence, hatred, dissension, immorality, alcoholism and tobacco addiction.

166. The disappearance and unregulated occupation of green areas are contributing to the spread of the phenomenon of "children of or on the streets".

167. To coordinate and supervise recreational, cultural and leisure activities, in pursuance of the Act adopted at the National Sovereign Conference (Sociocultural Committee), there has existed since June 1994 a National Youth Council responsible for the planning and coordination of activities for protection of the young.

## G. Special protection measures

### 1. Children in situations of emergency

#### (a) Refugee children

**Article 22**

*Special protection shall be accorded to a child who is a refugee or is seeking refugee status. The State has the obligation to cooperate with the competent organizations mandated to provide such protection.*

168. Focal areas of war, tension between ethnic groups, internal disorders and armed conflicts are spreading, particularly in Africa. Many people are fleeing their countries of origin and nationality to live in neighbouring countries, thus becoming refugees. Among them are many children, accompanied or otherwise, whose lot is a tragic one affecting their dignity and their rights.

169. Zaire is a signatory to the Universal Declaration of Human Rights, which states that "everyone has the right to seek and to enjoy in other countries asylum from persecution" (art. 14). It is a party to a number of international agreements enabling refugees to exercise the basic human rights that they will be able to invoke in their countries of asylum in order to lead a normal and active life. Thus in wartime children under 15 years old have a recognized right to free passage of any consignment of food, clothing and tonics specifically intended for them. Those who are orphans or separated from their families have a right to maintenance, to the practice of their religion and to education. They have a right to any preferential treatment (see Geneva Conventions of 12 August 1949).

170. The Organization of African Unity, of which the Congo is a member, adopted on 10 September 1969 a Convention governing the specific aspects of refugee problems in Africa. This legal instrument came into force in 1974 with the creation of an office for the placement and education of refugees. To accomplish its task, the office cooperates with UNHCR and other organizations concerned with refugees.

171. The problems of refugees in general and child refugees in particular cannot be solved by legal instruments alone. Neither can humanitarian aid root out the causes of the evil, which lie in dictatorial political systems, the wretchedness and poverty of the population, economic and mental underdevelopment, and social injustice.

172. Since UNHCR cannot on its own meet the costs entailed in the resettlement and repatriation of refugees, effective support from governments and from intergovernmental and private organizations is indispensable. The Congo has signed headquarters agreements with UNHCR. The distribution of the refugees under UNHCR care in the Congo is shown in the following table:

| Year | Refugees receiving assistance | Refugees not receiving assistance | Total |
|---|---|---|---|
| 31 December 1994 | 1 559 200 | 165 100 | 1 724 300 |
| 31 December 1995 | 1 292 900 | 40 000 | 1 332 900 |
| 31 October 1996 | 1 380 914 | 103 353 | 1 484 267 |

Source: UNHCR, Kinshasa, December 1996.

173. In the Congo, child refugees are housed in the State orphanages of Kisangani and in the Red Cross orphanage at Bukavu, among others. As no data are available on the percentage of children, we may assume that, on the pattern of neighbouring African countries, the proportionate number of children among the refugees can be evaluated at 50 per cent or more (as is the case in Angola, Uganda and Burundi).

Displaced children

174. Although not refugees, Congolese children who are displaced also need assistance; while upholding family cohesion, the State must organize facilities for their accommodation.

(b) Children affected by armed conflicts

**Article 38**

*"2. States parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities."*

*No child under 15 years of age shall be recruited into the armed forces. States shall also provide protection and care for children affected by an armed conflict, in accordance with the relevant provisions of international law.*

175. In case of war, rebellion, or ethnic or tribal conflict, children and women are among the victims. Many children suffer through being separated from their parents. The State must strengthen the application of the rules of humanitarian law applicable in case of internal or international armed conflict (the Geneva Conventions) by assisting children who fall victim to it. This applies to child victims of the tribal conflicts in Shaba, the child refugees from Rwanda and Burundi, and the thousands of Congolese displaced owing to the war in the east of the country.

176. It is difficult to dissociate the domain of international humanitarian law from the internal disorders and tensions currently accompanying the political disturbances in several countries of Africa. Accordingly article XXII of the African Charter on the Rights and Welfare of the Child provides as follows:

> "States parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife."

Currently, the complex nature (internal and international) of armed conflicts is diluting the force of Member States' obligations under humanitarian law. Where developing countries, in particular, are concerned, their situation of economic dependence in relation to the rich countries is compounded by a humanitarian dependence which sometimes gives rise to political and doctrinal discussions to the detriment of the application of the principle of "first call for children" enunciated by UNICEF.

177. Regarding children drawn into hostilities and recruited into the armed forces, the Sovereign National Conference went even beyond the provisions of the 1949 Geneva Conventions (Additional Protocols I and II) and the Convention on the Rights of the Child. Instead of 15 years, it set at 18 years the age for recruitment into military service and participation in hostilities. Unfortunately, after a series of compromises, those provisions were not included in the transitional Constitution now in force; however, the latter does proclaim in article 35 the duty of the State to integrate human rights education into the school curriculum and take measures for dissemination of human rights information.

178. The provisions of the military criminal code regarding children who take part in hostilities or are recruited into armed forces must be revised to bring them into conformity with those of the Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), which recommend differential penal treatment between child and adult offenders. The reader is also referred to chapter II, subsection B.3, of Part One (paras. 27 and 28 above).

179. Failing rapid action Africa, with its numerous wars, is at risk of developing the "child soldier" or "child militiaman" phenomenon.[30]

180. In view of the contradictions between the Convention on the Rights of the Child and the Geneva Conventions (Additional Protocols) concerning the age of recruitment and enrolment of children, the Congo will need, in line with document A/51/306, dated 26 August 1996, of the United Nations General Assembly, dealing in particular with the impact of armed conflict on children, to work with the other Member States towards completing the preparation of the

optional additional protocol on the participation of children in armed conflicts, so as to raise to 18 years (as the Sovereign National Conference had indeed proposed) the minimum age for recruitment and participation in hostilities.*

2. Children in conflict with the law

(a) Administration of juvenile justice

**Article 40**

*Any child alleged as, accused of, or recognized as having infringed the law has a right to treatment such as will promote his sense of dignity and worth, which takes account of his age and which aims at his reintegration into society.*

*The child has a right to fundamental guarantees, as also to legal or other appropriate assistance for his defence.*

*Judicial proceedings and placement in institutions must be avoided wherever possible.*

181. Juvenile justice is regulated by a colonial enactment: the Decree of 6 December 1950 regarding juvenile delinquency and cases of associated deviant behaviour. The legislation defines minors for penal purposes as persons under age 16 (article 1 of the Decree of 1950, amended by Ordinance-Law no. 78/016 of 4 July 1978). Competence to try the acts committed by a juvenile offender is vested in the courts alone, namely at present the district courts (and, more specifically, the juvenile chambers established within them). Hence the attribution to the judiciary of competence to act in the case of juvenile offenders.

182. Further, the legislation stipulates that the Decree does not override the provisions of general law in punitive matters except where it expressly so states, and that whatever is not amended in general legislation must remain intact; i.e. that the judge must in certain cases refer to the general law for adults. In that respect, the basic guarantees regarding procedure and judgement that are accorded to adult defenders are also accorded to juveniles. These include in particular the right to be assisted by counsel for the defence of its interests, the right to be heard, the right to confrontation with witnesses, the right to appeal to a higher court, etc.

183. The Decree contains mandatory provisions for identification and for investigation of social circumstances in the course of which measures may be taken for provisional custody, in a family or an institution (arts. 15 and 16), or exceptionally in a prison, where the juvenile must be placed under a special regime (art. 17).

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* Secretariat note: The draft optional protocol additional to the Convention on the Rights of the Child, concerning the involvement of children in armed conflicts, was adopted by the Commission on Human Rights at its fifty-sixth session (resolution 2000/59 of 26 April 2000, annex A). The text appears in document E/CN.4/2000/L.11/Add.6 and in the report of the Commission (E/2000/23-E/CN.4/2000/167, chap. I).

184. The Decree accords extensive discretionary power to the judge, who, depending on the circumstances specific to the offender or the offence, may choose between reprimand, placement in an institution (closed or open) or with a private individual until the age of 21 years, or detention at the disposal of the government until the age of 21 years. The same applies to the system of non-custodial supervision (arts. 13 and 14) applied to a juvenile serving a sentence in an open establishment. All these measures are subject to review in the juvenile's interest (art. 18). The juvenile offender cannot therefore be subject to the infliction of a penalty (art. 5), including capital punishment. However, in order to comply with the spirit of the Convention, the age of criminal majority needs to be raised from 16 to 18 years.

185. We see from the above that the 1950 legislation, though antedating the Beijing Rules and the Convention, nevertheless reflects to some degree the spirit of those international instruments. Being nearly 50 years old, however, the 1950 Decree needs reforming to adapt it more closely to the needs of juveniles, to the realities of the country's situation and to the scientific requirements of modern judicial procedure. To that end, the government has initiated preliminary draft reforms to take the juvenile justice system out of the hands of the judiciary, widen the range of measures which are still too limited, promote community-type solutions and categorize juvenile offenders with a view to better tailoring to the individual of the measures taken. The draft determines the minimum threshold below which the child is considered as incapable of infringing the law. The absence of specialized courts and of personnel trained in judicial procedure is conducive to incorrect and even uncertain application of the 1950 decree.

(b) Children deprived of their liberty

**Article 37**

*No child shall be subjected to torture, cruel treatment or punishment, or illegal arrest or detention. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age.*

*Every child deprived of liberty shall be separated from adults, unless it is considered in the child's best interest not to do so.*

*Every child deprived of his or her liberty shall have the right to access to legal and other appropriate assistance, as well as the right to maintain contact with his or her family.*

186. The decision to detain a minor in a cell is taken by judicial police officers, who furthermore rule illegally on the substance of cases involving young offenders; by law, this competence lies solely with district courts (Decree of 1950, arts. 2 and 5). This situation accounts for the very small number of juveniles brought before the courts. By way of example, Gombe district court, whose jurisdiction covers the areas of Gombe, Kinshasa, Barumbu and Lingwala, with a population of 166,154 in 1987, is recorded as having dealt with only nine cases involving juveniles in 1987 and five in 1988. The Matete court, which covers the areas of Matete, Limete and Kisenso (360,889 inhabitants), dealt with 15 recorded cases in 1987 and 18 in 1988.[31]

187. Ordinance-Law No. 13/140 of 13 January 1954 governs State custodial and educational establishments constructed with a view to the implementation of the Decree of 6 December 1950 relating to young offenders. These enactments regulate the placing of young offenders in institutions. Although preceding in time the Convention and the Beijing Rules (art. 26), most of these enactments respect the rights of the child.

188. However, a number of these establishments (about 10 in the whole country) are in a dilapidated state; only two or three (notably Madimba and Benseke-Futi in the Kinshasa and Lower Zaire region) are still operational. One NGO, the League for Assistance to Juveniles in Prison, recorded, in September and December 1995, a total of 18 children or young persons between ages 9 and 24 in the State establishment in Benseke-Futi. In Madimba, on 23 September 1995, it recorded a total of 31 young people aged between 11 and 23; the figure for people between the ages of 11 and 21 at the Provisional Accommodation Centre within Makala central prison was 19. It should not be forgotten that under Congolese criminal law a person who is aged under 16 at the time of the offence is considered to be a young offender. The age limit for holding a young offender at the disposal of the governmental authorities may, in the case of certain serious offences, be raised from 21 to 25. In the above-mentioned establishments, young people spend most of the time idle, without effective training or supervision. Review of the measures taken is a rare event. All the privations they suffer constitute veritable torment for the children concerned.

189. The Government will make a point of giving a democratic character to the juvenile justice system,[32] notably by entrusting its management to private enterprise, with which cooperation will continue during the social rehabilitation of juveniles under non-custodial supervision (Decree of 1950 on young offenders, arts. 13 and 14). In this connection, mention may be made of Fr. Franck's Rehabilitation Project (ORPER) and Assistance to Disadvantaged Children (AED) in Kinshasa, whose activities cover action of this kind.

### 3. Children in situations of exploitation

#### (a) Child labour

**Article 32**

*Children have the right to be protected from performing any work that is likely to be harmful to their health, education or development.*

*The State shall provide for a minimum age for admission to employment and regulate conditions of employment.*

190. The Labour Code regulates child labour, and in particular capacity to enter into a contract, the prohibition of night work, the duration of daily rest and monthly leave, the kinds of work children are forbidden to perform, and penalties which must be imposed on an employer who infringes the above provisions. It should be noted that the measures for the implementation of these various provisions are developed by Decree No. 19/67 of 3 October 1967, Decree No. 68/13 of 17 May 1968 and Decree No. 28/75 of 30 October 1975.

(i) Capacity to enter into a contract (Labour Code, art. 3)

191. The hiring or continued employment of a person under age 14 is prohibited. A person aged between 14 and 16 may not be hired or retained except in order to perform light, healthy work. The hiring or retaining of a person aged between 14 and 16 is prohibited if not agreed to by the person exercising parental authority or guardianship over that person.

(ii) Prohibition of night work

192. It is forbidden to employ children under the age of 18 on night work in public or private establishments (art. 106).

(iii) Hours of work, daily rest and monthly leave

193. No child aged between 14 and 16 may be employed for a period exceeding four hours a day or work in breach of the regulations relating to education. No child between the ages of 16 and 18 may work more than eight hours a day and, if the duration of work is in excess of four hours, it must comprise one or more breaks. The daily rest period for children between two periods of work must be at least 12 consecutive hours (art. 108). The duration of monthly leave must be at least one and a half working days per full month of employment for workers under age 18 (art. 120).

(iv) Kinds of work which may not be done by children

194. A child may not perform work which may exceed its strength and must be assigned to appropriate employment (art. 116, para. 2). In addition, in the relevant legislation care has been taken to define work done and the effort which it entails, depending on whether it is performed by a boy or a girl. Decree No. 68/13 of 17 May 1968 forbids the employment of children under age 18 on certain work such as: checking, greasing, cleaning or repair of machines or mechanism while running; driving of motors, vehicles and machines, and extraction of minerals: in other words, any work liable to jeopardize their health or carrying a special risk of accident. The same applies to work of an immoral character, such as working as a barman or in some other capacity in bars or in establishments which print indecent texts.

(v) Labour inspection

195. The Labour Code makes provision for a labour inspection department which exercises supervision and ensures observance of the relevant provisions (art. 160). In the event of a violation, it establishes penalties to be imposed on those responsible.

196. Given the current disastrous economic situation, where employment in the informal economic sector is the only answer for the majority of the population,[33] a number of parents tolerate, or even send their children to do, work which the latter are forbidden to perform by law. In view of this tolerance and the failure of parents, children and the labour inspectorate to report this situation, employers exploit children at their leisure. Even the State seems indifferent to the manifold cases of violation ("mine children" in Kasaï, the "bana lunda" in Bandundu, who dive or dig to considerable depths to look for diamonds).

(b) Drugs and narcotic substances

**Article 33**

*Children have the right to be protected from the use of narcotic drugs and psychotropic substances, and from the use of children in the illicit production and trafficking of such substances.*

197. The Legislative Ordinance of 22 January 1903, as approved by the Decree of 10 March 1917, prohibits the cultivation, sale, transport, possession or consumption of hemp. These provisions need to be expanded to cover other drugs and narcotic substances such as morphine, cocaine, roche-4, etc.[34]

198. Ordinance No. 27 bis (hygiene) of 15 March 1933, as subsequently amended, regulates the exercise of the pharmaceutical profession. This must conform to the provisions of the international conventions, including the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. The Congo ratified, in 1964, the United Nations Single Convention on Narcotic Drugs of 1961 and has acceded to a number of other related international legal instruments.

199. Although many children inhale solvents and consume certain toxic pharmaceutical products such as roche-4 or other imported drugs, the act of smoking hemp is becoming a veritable way of life which forms part of the "minority moralities" which dysfunctional subgroups are trying to impose on the social majority. Unemployed and disadvantaged street children, children known as "mine children" or "bana lunda", together with young adult musicians, drivers and soldiers, are great hemp consumers. By way of illustration, it may be noted that of 168 children helped by the AED, 134 (78.5 per cent) stated that they had used drugs (hemp, roche-4, etc. Unpublished study). The common factor for all these categories of young people is daily stress due to, inter alia, fear of the difficult living and working conditions which will confront them at an early age in the informal economic sector.

200. On the specific question of girls living in the streets, because of drugs they tend to have sexual experiences with adults (mainly expatriates or soldiers), and also with boys and other girls. They experience feelings of guilt and despair (about the future), accompanied by a desire to secure the means of existence and even luxury articles (jewellery, designer clothing). They are exploited by pimps for their own pleasure or for commercial ends.

201. Apart from narcotic drugs and hemp, the advertising of alcoholic beverages and tobacco by young people is immoral. Ordinance-Law No. 68/010 of 6 January 1968 establishing regulations relating to alcoholic beverages, and No. 75/153 of 31 May 1975 establishing the opening hours of bars and prohibiting night clubs throughout the Republic, should be strengthened and enforced in practice. They will be expanded by provisions regulating posters and advertising on television, radio, etc., in order to prohibit economic operators from overhyping alcoholic beverages and, above all, using juveniles and mothers for this purpose.

202. Apart from legal measures, the State will disseminate information on the dangers of narcotic drugs and psychotropic substances to mental, physical and social health, and especially that of young people - the adults of tomorrow. These measures will have to be accompanied by a policy aimed at social welfare through the improvement of living conditions.

(c) Sexual exploitation and sexual abuse

**Article 34**

*The State shall protect the child from sexual abuse and sexual exploitation, including prostitution and the use of children in pornographic performances.*

203. Apart from the forms of abuse and exploitation prohibited by the Criminal Code (see paras. 63-71 above) and maltreatment as we have defined it (see paras. 125-130), we consider it useful to draw particular attention to the sexual exploitation of adolescents, who are victims in two respects: first, of the difficult living conditions with which the population as a whole are confronted, and secondly, of the vulnerability related to a particular stage of their psycho-social, physical and cognitive development.

204. WHO defines adolescence as the period from 10 to 19 years, which represents a very turbulent stage of development. It is an irregular and uncoordinated period of transition during which the child passes from childhood to adulthood, from economic dependence to relative independence, from puberty to full sexual and reproductive maturity.[35] The disparity in the ages at which adolescents reach maturity has an effect on their vulnerability to sexual exploitation, notably when periods and breasts appear at an early age in girls. This maturity, which makes them look older than they are, may lead some people to expect of them sexual behaviour whose consequences they are incapable of dealing with.

205. Sexual exploitation, which is a very real phenomenon in the Congo, manifests itself in several forms. Unfortunately, however, we do not have any in-depth studies or statistics on the subject (reference may nevertheless be made to the document submitted to the 1996 World Congress in Stockholm - see note 21). The various forms of sexual exploitation recorded include: incest (by family members); forced early and incestuous marriage; rape (by brothers-in-law of sisters-in-law, by employers of maids, by teachers of pupils, by soldiers and prisoners of adult women, girls or female prisoners, etc.); "cohabiting" of adults and minors (mario); procuring, prostitution, pornography. These evil practices result in sexually transmissible diseases, abortions, sterility, early pregnancy, forced celibacy of women, brutality, physical disabilities, etc. From the psychological and social standpoints, they jeopardize mental health and the stability of life in society, families and schools.

206. The causes are mainly of an economic nature (poverty), but also of a social nature (proximity of dwellings, depravity), a family nature (economic and emotional insecurity), a political-legal nature (absence, insufficiency or non-enforcement of relevant legal provisions), or a cultural nature (lack of savoir-vivre, ignorance of sexuality, notably because of certain sexual taboos). Again in the cultural sphere, reference may be made to the custom of certain ethnic groups which, as a token of hospitality, "obliges parents to offer their daughters - and men to offer their wives - to a visitor to a village in order to express their esteem".[36] Street children

and young migrants living with family members (where they are left to their own devices, without effective supervision or genuine practical support) are at greatest risk. Consequently, the stages of the child's moral development interact with the reality of the sociocultural and political context in which he or she grows up.

207. Instead of labelling or stigmatizing adolescents in a "situation of social risk", the State, adults and society must promote feelings of receptiveness and understanding of their situation, with the aim of protecting them against the evils that lie in wait for them.

**Article 35**

*The State has an obligation to take all appropriate measures to prevent the abduction or sale of children or traffic in children.*

208. With regard to sale, trafficking and abduction, reference should be made to the information given above in chapter I, section B.4 (paras. 67 and 68).

H. Observance of established norms

**Article 41**

*If a provision relating to the rights of the child contained in the national or international law in force for a State is more favourable than the similar provision in the Convention, the more favourable norm shall apply.*

209. Africa is moving towards a form of modernity which nevertheless retains "authentic" aspects; these should be taken into account and safeguarded. For this reason, legislation which is too advanced in relation to mental, social, economic and cultural structures is sometimes more dangerous than an outdated legal system.[37] By way of example, it should be stated that a Congolese considers that physical punishment of a child by the person having authority over him still has an educational value. However, the law protects children against any abuse in this respect (Family Code, art. 319; Criminal Code, arts. 46 et seq.). For example, excision seen from the physical standpoint is a barbarous and inhuman practice but, when considered from the cultural standpoint, it retains an initiatory, educational and sexual value which should be safeguarded.

210. It is desirable that, before ratifying a convention, States parties should first recast their legislation in order to introduce amendments in conformity with the spirit of that convention. The African States in particular have no difficulty in signifying their agreement with international legal instruments; many do so more out of political considerations than for the purposes of the defence of the rights of the child. The inadequate implementation of these instruments bears witness to this fact.

I. General measures of implementation and entry into force of the Convention

211. The Convention has become an integral part of international law since, of 186 States parties, 42 - more than the 30 required - had adopted it and 135 ratified it by January 1996.

The Congo is a signatory of the Convention, which it ratified on 22 August 1990. Since that date, however, its publication in the Journal officiel in conformity with article 112 of the transitional Constitution has been pending. Nevertheless, several bodies and mechanisms have been set up to publicize and implement the principles contained in the Convention.

(a) At governmental level: establishment of a Child Protection Department in the Ministry of Public Health and the Family (1992), and similar departments and services in other ministries;

(b) At grassroots-community level: establishment of non-governmental organizations and associations such as: Defence for Children International (DCI), Zaire section (February 1990), the LIZADDE (June 1991), the APAPE-Zaire (1993) and the African Zone League for the Defence of the Rights of Schoolchildren and Students (LIZADDEL) (1994).

212. Many types of activities have been undertaken to publicize the Convention (studies, printing of documents, lectures, radio and television broadcasts, press articles, seminars, translation of the Convention into the four national languages). Several bodies notably NGOs and essentially with UNICEF support, have contributed to the dissemination of the Convention. The fact is, however, that the rights of the child are not yet sufficiently well known in the Congo, the reasons being the unfavourable political environment and context, lack of coordination, and the inadequacy of human, material and financial resources for giving continuous publicity to the Convention.

213. In 1994, the Congo established a National Committee on Children responsible for reporting to the United Nations Committee on the Rights of the Child on the implementation of the Convention in conformity with article 44. This National Committee is composed of representatives of ministries, NGOs, associations and religious denominations. It is important to emphasize that a number of international organizations (UNICEF, UNHCR, UNESCO, ILO) hold observer status within the National Committee, their incorporation ensuing from the provisions of article 45 (a) of the Convention.

214. The present report is the first which the National Committee has submitted to the Committee on the Rights of the Child. It will be given a large print-run so that it can be widely distributed among NGOs, associations and international organizations in the Congo whose mandate gives them responsibilities relating to children. Meetings, notably in the form of a national forum, could be organized in order to facilitate the dissemination of the report and to elicit suggestions and criticism.

215. The training of participants and the execution of specialized studies relating to matters covered by the Convention will make it possible, inter alia, to find appropriate strategies for the dissemination of the Convention and its acceptance within the Congolese mentality. In order to do this, cooperation with the international organizations is essential, since the Congo, like African countries in general, is experiencing financial difficulties in organizing research and training.

216. UNICEF, for example, has made possible the publication of studies on the following topics: civic education - the rights and duties of children up to the age of 18 (by C. Meeus, 1994); the place of the Convention on the Rights of the Child in Zairian law (by J. Idzumbuir Assop, 1994); Justice for minors in Zaire - realities and perspectives (by J. Idzumbuir Assop, 1994). In Kinshasa and several other cities, UNICEF has financially supported a number of seminars and symposia on the promotion of the rights of the child, notably the awareness-raising seminars organized by the DCI, under the auspices of the Government and UNICEF, for schoolchildren and military personnel in the capital.

## III. DECISIONS AND RECOMMENDATIONS

217. Although their enactment in many cases preceded the adoption of the provisions of the Convention on the Rights of the Child, the Congolese legal instruments in force to a large extent reflect the spirit of the Convention. However, an essential effort remains to be made, namely to ensure the effective implementation of these provisions.

### A. Decisions

218. In order to ensure that these instruments are indeed implemented effectively, the Government, after having ratified the Convention, undertakes to:

1. Ensure the publication of the text of the Convention in the Journal officiel de la République, in conformity with article 12 of the transitional Constitution, in order that the Convention may be enforceable against third parties;

2. Support the Committee on the Rights of the Child in order to enable it adequately to respond to its multiple and varied tasks;

3. Support and encourage services, commissions, etc., whose activities are aimed at the reform or amendment of laws characterized by inadequacies, lacunae or contradictions with respect to the Convention (for lack of finance, the Standing Commission on the Reform of Congolese Law has not functioned since 1991);

4. Extend necessary support for the organization of measures for the enforcement of laws establishing protection for children (e.g. Decree of 1950 on disadvantaged children, Family Code);

5. Periodically submit the country's report, in conformity with article 44 of the Convention;

6. Genuinely simplify activities relating to promotion of the rights of the child as regards design, execution, follow-up and evaluation;

7. Integrate more closely activities relating to promotion of the rights of the child into the national development programme;

8. Organize and support services, groups and associations engaged in promoting the rights of the child;

9. Assist parents in their duty to bring up and care for children;

10. Create a political, economic, social and cultural environment conducive to the execution and success of activities to promote the rights of the child.

## B. Recommendations

### 1. To parents

219. "By their fruits shall ye know them". In the Congo, however, parents are often heard saying "Babotaka mwana, kasi motema te", which translates as "We bring the child into the world, but not its heart". If "motema" means "personality", one must agree with the eminent psychologist C. Debuyst that personality is something which is "constructed". It develops in contact with internal or endogenous factors and external or exogenous factors. For this reason, we recommend that parents should:

(a) Bring up their children with the kindness and affection due to their dignity as human and social beings (in the Congo, the word "parents" is understood in a broad sense covering "patrilineal and matrilineal kinship", whether this link results from civil filiation or from purely legal filiation);

(b) Consider children as subjects of law capable of participating in the renewal of society's institutions;

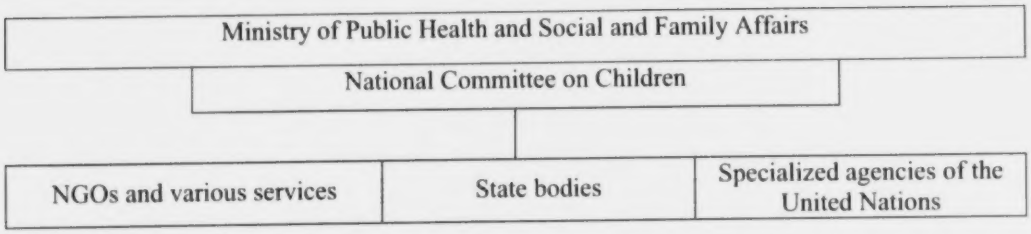
(c) Endeavour to use the knowledge, facilities and resources made available to them by society in order to help them with family planning and the supervision, education, and care of children;

(d) Avoid rigidly adhering to retrograde traditional behaviour liable to cause or give rise to generational, cultural or social-class disputes between them and children; such a change of mentality and behaviour will be possible only through an educational input, which will lead parents to make harmonious use of traditional and modern values with a view to their adaptation for the purposes of the better education of children. By way of example, action to combat excision must not be allowed to create a cultural and educational void.

### 2. To non-governmental organizations

220. The protection of children in general and their rights in particular involves numerous and varied matters which are dealt with by a number of national and international NGOs. In order to ensure that they do not work in a disorganized manner, the establishment of a coordination network is essential; this network will be responsible for, inter alia, the design and follow-up of programmes for the protection of the rights of the child.

221. To this end, we propose the following structure:


Ministry of Public Health and Social and Family Affairs
National Committee on Children
NGOs and various services
State bodies
Specialized agencies of the United Nations

In short, the National Committee on Children, under the aegis of the Ministry responsible for the advancement of the family, will work in conjunction with other state bodies, NGOs and various services, and with United Nations specialized agencies whose responsibilities include the protection of children. The Government will provide material and financial support for national initiatives in order to ensure that they adequately fulfil their duties and obligations. To achieve this, close cooperation will be established between them and the specialized agencies.

3. To the international organizations

222. Particularly during this period of economic crisis, the support of the international organizations whose responsibilities include the protection of children and the promotion of their rights is essential. This support will primarily consist of essential logistic and financial assistance for:

(a) Research and training of participants - children and young people;

(b) Enforcement of laws for the protection of children and the family (e.g. the Law on the protection of young offenders and delinquents, the Family Code);

(c) Publicity for, and dissemination of, the Convention on the Rights of the Child;

(d) Follow-up and evaluation of activities to promote the rights of the child.

UNICEF is already involved in several of these activities.

CONCLUSION

223. The evaluation of implementation of the various articles of the Convention in the Congo indicates that reference to the Convention's provisions is more de jure than de facto. This finding may be accounted for by the fact that:

1. Especially in Africa (and indeed in the Congo), there is a discrepancy between the modern conception of the child (who needs special protection) and the ancestral philosophy which holds that, as a "member of the community", the child enjoys natural protection.

2. The promotion and protection of the rights of the child therefore constitute a primarily modern necessity related to rapid changes in social and cultural structures which, unfortunately, do not constitute priorities for developing States seeking above all to consolidate their political regimes.

3. Ignorance of modern methods of educating and caring for children, together with growing poverty and individualism, particularly in the towns and cities, constitute impediments to realization of the rights of the child.

224. For this reason, instead of repressive or restrictive measures, preference will have to be given mainly to strategies using "attractive" education and awareness-raising measures. The latter, unlike the former, not only avert cultural and generational conflicts, but also promote spontaneous conformity with new and valued patterns of behaviour because their acceptance would have been facilitated; this in the final analysis is less costly to society.

225. In addition, activities aimed at the promotion and protection of the rights of the child must be more closely incorporated within the national programme for the development and general well-being of the population in order to secure greater involvement by the State.

Notes

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[4] Ibid.

[5] Ministry of National Education: "Plan cadre national pour la reconstruction du système éducatif de la RDC" ("National outline plan for the reconstruction of the education system in the RDC"), Vol. 2, Kinshasa, August 1999.

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[7] UNDP Human Development Report, 1999: Indicators and Statistics.

[8] See footnote 6.

[9] Education sector.

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## Appendix

The following persons have contributed to the preparation of this document:

1. Collaboration of experts

    1. Mr. Yaato Basosila Ya Shaosala, President of Assossa District court and juvenile court judge.

    2. Ms. Inzun Okomba, Director, Child Protection Service, General Secretariat for the Family; General Rapporteur of the National Committee on Children.

    3. Mr. Sandokan Kalala, Director, Assistance for Disadvantaged Children (AED)

2. Guidance and technical contribution by the UNICEF/Zaire office

    1. Ms. Danielle Maillefer, Chief, Information and Communication Section, UNICEF/Zaire.

    2. Ms. Perpétue Sudila Tambu, Social Mobilization Officer, UNICEF/Zaire.

    3. Ms. Marie-Claire Yaya, Information Officer, UNICEF/Zaire.

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